Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-961

NEW YORK TELEPHONE COMPANY, WESTERN ELECTRIC COMPANY, AMERICAN TELEPHONE & TELEGRAPH COMPANY, LONG LINES DEPARTMENT, and EMPIRE CITY SUBWAY COMPANY (LIMITED),

Petitioners,

—v.—

NEW YORK STATE DEPARTMENT OF LABOR, LOUIS L. LEVINE, Industrial Commissioner of the New York State Department of Labor, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, and JAMES H. TULLY, JR., State Commissioner of Taxation & Finance,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 4, 1978
CERTIORARI GRANTED MARCH 27, 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-961

NEW YORK TELEPHONE COMPANY, WESTERN ELECTRIC COMPANY, AMERICAN TELEPHONE & TELEGRAPH COMPANY, LONG LINES DEPARTMENT, and EMPIRE CITY SUBWAY COMPANY (LIMITED),

Petitioners,

—v.—

NEW YORK STATE DEPARTMENT OF LABOR, LOUIS L. LEVINE, INDUSTRIAL COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF LABOR, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, and JAMES H. TULLY, JR., STATE COMMISSIONER OF TAXATION & FINANCE,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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* The opinion of the court of appeals is reprinted at pages 1a-18a of the Appendix to the Petition for a Writ of Certiorari. The declaratory judgment and order for permanent injunction issued by the district court is reprinted at pages 19a-22a of the Appendix to the Petition for a Writ of Certiorari and the opinion of the district court is reprinted there at pages 23a-54a. The memorandum and order of the district court, denying defendants' motion for summary judgment, is reprinted at pages 55a-56a of the Appendix to the Petition for a Writ of Certiorari.

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Docket Entries

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 CIV 4557

DATE	PROCEEDINGS
Oct. 24-73	Filed complaint & issued summons.
Dec. 6-73	Filed summons & ent. marshal's return served on: NY State Dept of Labor by Bertha Diggs on 10-30-73, Norman Gallman unexecuted on 10-30-73, Mario A. Procaccino by J. Fichera on 11-20-73, N.Y. State Dept of Taxation & Finance by I. Nieves on 11-20-73, Louis J. Lefkowitz by Mr. Sattler on 11-19-73, & Louis L. Levine by Bertha Diggs on 10-30-73.
Dec. 10-73	Filed ANSWER of defts to the complaint.
5/22/74	PRE-TRIAL HELD, OWEN, J.
9/12/74	P.T.C. HELD
Sep. 16-74	Filed stip & order—All proceedings with respect to the determination of the amount of damages in this case shall be deferred until such time as the constitutional issues are fully resolved by this Court.—Owen, J.
Sep. 27-74	Filed Defts. Notice of Motion & Supporting affidavit. Re: Judgment. ret. 11/1/74.
Sep. 27-74	Filed Defts. Memorandum of Law.
Oct. 25-74	Filed pltff's affdvt in opposition to deft's motion for summary judgment.

Docket Entries

DATE	PROCEEDINGS
Oct. 25-74	Filed pltffs' memorandum of law in opposition to motion for summary judgment.
Nov. 6-74	Filed Reply Memorandum of Law in support of State Defts. Motion for summary judgment.
Jan. 20-75	Filed Affidavit by Raymond E. Williams in support of pltffs. opposition to defts motion for summary judgment.
Mar. 31-75	Filed MEMORANDUM OPINION #42,125—Defts' motion for summary judgment is denied. So Ordered—Owen, J.—Mailed notices.
6-18-75	PRE-TRIAL CONFERENCE HELD BY Hartenstine
1-12-75	PRE-TRIAL CONFERENCE HELD BY HARTENSTINE, U.S. MAG.
12- 9-75	PTC Held Owen, J.
01-14-76	Filed revision to Consented Pre-Trial Order ..... Owen, J.
02-26-76	Before Owen J., non-jury trial begun.
02-27-76	Trial continued.
03-11-76	Trial continued.
03-12-76	Trial continued.
03-15-76	Trial continued.
03-16-76	Trial continued.
03-17-76	Trial continued.
04-02-76	Trial continued.
04-16-76	Trial continued & concluded. Decision reserved.

Docket Entries

DATE	PROCEEDINGS
05-07-76	Filed transcript of record of proceedings dated Feb. 26, 27, March 11, 12, 15, 1976.
05-07-76	Filed transcript of record of proceedings dated March 16, 17, April 2, 16, 1976.
06-25-76	Filed Pltffs'. post-trial memorandum of law.
06-25-76	Filed Pltffs'. appendices A & B to post-trial memorandum of law.
07-02-76	Filed Appendices A and B to Pltffs'. post-trial memorandum of law.
07-09-76	Filed Ptlffs'. proposed findings of fact & conclusions of law.
7-22-76	Filed Appendix to Dfts. Post Trial Memorandum of Law.
7-22-76	Filed Dfts. Post Trial Memorandum of Law.
7-22-76	Filed Dfts. Proposed findings of Fact & Conclusions of law.
08-10-76	Filed Pltffs'. post-trial reply memorandum of law.
5-24-76	Filed Opinion #45939. On the basis of the New York Labor Law, on the basis it provides for the payment of unemployment compensation to strikers, is state intervention, causes an employer to finance it's own strikers. It is in conflict with federal labor law policy and is therefore unconstitutional and void under the supremacy clause of the U.S. Constitution..... So ordered.....Owen, J. m/n.

DATE	PROCEEDINGS
6-22-77	Filed deft notice of appeal to the USCA from order of J. Owen dated 5-24-77. m/n
6/27/77	Filed amended notice of appeal to the USCA form the order of J. Owen dated 5/24/77 by State Defts. m/n
6/27/77	Filed declaratory judgment and order for permanient injunction declaring Article 18 of the N.Y. Labor Law to the extent it provides for the payment of unemployment compensation to strikers is unconstitutional and void; defts within 8 weeks of entry of this order shall recredit pltff respective unemployment insurance accounts retroactive to 1971 etc. Owen J. Judgment ent. Clerk 6/27/77 m/n
6/28/77	Filed memo and order . . . I decline to grant a stay pending appeal, I do grant a stay until 2PM on 6'27'77 for purpose of allowing State to apply to Court of Appeals to determine if that Court wihes to grant a stay. So ordered Owen J. m/n
7- 8-77	Filed Stipulation Designating Certain Documents & Exhibits to Become Part of Record on Appeal.
7- 8-77	Filed notice of transmission of record to USCA.
7-22-77	Filed supplemental record on appeal with USCA
8-31-77	Filed transcript of record of proceedings dated 6-9-77

DATE	PROCEEDINGS
12-16-77	Filed True Copy of U.S.C.A. Mandate with opinion attached. Ordered that judgment of district court is reversed & the action is remanded with instruction to dismiss the complaint in accordance with the opinion of this court with costs to be taxed against the appellees. Docketed as a Judgment #78,376 on 12-19-77 sent to Aponte.

UNITED STATES COURT OF APPEALS

For the Second Circuit

77-7337

DATE	PROCEEDINGS
6-23-77	Filed copies of docket entries and notice of appeal (Defendants)
6-27-77	Filed motion for stay, appellant, p/s
6-27-77	Filed order granting appellants' motion for a stay to the extent that that the judgment and order of the district court are stayed until 6-30-77 at which time the motion for a stay will be heard at 10:30 A.M. in Room 1705
6-28-77	Filed copies of docket entries and amended notice of appeal
6-30-77	Filed order granting motion for stay. Appellant's brief by 7-8-77; reply brief, if any, by 7-18-77; appellees' brief by 7-14-77; joint appendix by 7-14-77; argument of appeal shall

DATE	PROCEEDINGS
	be set for the week of 7-18-77; all papers may be in tw form
7- 8-77	Filed record (Original papers of district court)
7-11-77	Filed briefs, appellant, p/s
7-13-77	Filed briefs, amicus curiae, p/s (N.Y.S., AFL-CIO)
7-15-77	Filed briefs, amicus curiae, p/s (Rochester Telephone Corp., et al.)
7-15-77	Filed briefs, amicus curiae, p/s (Dow Chemical Co.)
7-15-77	Filed supplemental record (Original papers of district court)
7-18-77	Filed briefs, appellee, p/s
7-18-77	Filed appendix, appellee, p/s
7-18-77	Filed four volumes of joint appendix, appellant, p/s (Vol. I. —10 copies, Vol. II, III, IV—four copies)
7-19-77	Filed reply briefs, appellant, p/s
7-19-77	Filed briefs, amicus curiae, p/s (Local 1, etc.)
7-19-77	Filed final briefs, appellee, p/s
7-20-77	Filed briefs, amicus curiae, p/s (District 65, et al.)
7-22-77	Argument heard (By: Meskill, C.J., Van Pelt Bryan, Stewart, DJJ)

DATE	PROCEEDINGS
7-22-77	Filed second supplemental record (Original papers of district court)
7-22-77	Filed order granting motion to continue stay now in effect pending determination of the appeal
11- 9-77	Judgment reversed and remanded with instructions to dismiss the complaint, Meskill, C.J.
11- 9-77	Filed judgment.
12- 9-77	Filed order denying motion for clarification of stay granted by this court pending determination of the appeal
12- 9-77	Filed order denying motion to stay issuance of the mandate pending application to the Supreme Court of the U.S. for a writ of certiorari pursuant to Rule 41(b) of FRAP
12- 9-77	Filed order denying motion for a stay
12-12-77	Issued mandate (opinion, judgment and statement of costs)
12-20-77	Original, supplemental and second supplemental record returned to district court
1- 9-78	Filed notice of filing of petition for writ of certiorari (77-961)
3-31-78	Filed certified copy of order from Supreme Court granting petition for writ of certiorari

Summons

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 73 Civ. 4557

NEW YORK TELEPHONE COMPANY, WESTERN ELECTRIC COMPANY, AMERICAN TELEPHONE & TELEGRAPH COMPANY, LONG LINES DEPARTMENT, and EMPIRE CITY SUBWAY COMPANY (LIMITED),

Plaintiffs,

—v.—

NEW YORK STATE DEPARTMENT OF LABOR, LOUIS L. LEVINE, Industrial Commissioner of the New York State Department of Labor, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, and NORMAN GALLMAN, State Commissioner of Taxation & Finance,

Defendants.

To the above named Defendants:

You are hereby summoned and required to serve upon Aranow, Brodsky, Bohlinger, Benetar, Einhorn & Dann, plaintiffs' attorney, whose address 469 Fifth Avenue, New York, New York 10017, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT
Clerk of Court.

E. A. BECKER
Deputy Clerk.

Date: October 24, 1973

Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 4557

NEW YORK TELEPHONE COMPANY, WESTERN ELECTRIC COMPANY, AMERICAN TELEPHONE & TELEGRAPH COMPANY, LONG LINES DEPARTMENT, and EMPIRE CITY SUBWAY COMPANY (LIMITED),

Plaintiffs,

—against—

NEW YORK STATE DEPARTMENT OF LABOR, LOUIS L. LEVINE, Industrial Commissioner of the New York State Department of Labor, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, and NORMAN GALLMAN, State Commissioner of Taxation & Finance,

Defendants.

The plaintiffs, by their attorneys, Aranow, Brodsky, Bohlinger, Benetar, Einhorn & Dann, complaining of defendants, respectfully allege:

1. This action arises under the Supremacy Clause of the Constitution of the United States, Article VI, Clause 2, under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and under the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §151 et seq. ("LMRA"), an act of Congress regulating commerce. It seeks, among

other relief, to declare invalid and enjoin the application of Article 18 of the New York Labor Law insofar as unemployment insurance benefits thereunder are provided to striking employees. This court has jurisdiction of the action under 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. §§ 2201 and 2202; and the matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000.00) in respect to each of the plaintiffs.

AS A FIRST CAUSE OF ACTION:

2. Plaintiff New York Telephone Company ("TELCO") is a domestic corporation organized and existing under the laws of the State of New York with its principal place of business in the Southern District of New York.

3. The Bell System is a descriptive term commonly understood in the telephone industry, both by employers and unions, as encompassing telephone operating and other companies, including among others TELCO, Western Electric Company ("WECO"), the Long Lines Department of the American Telephone and Telegraph Company ("AT&T") and the Empire City Subway Company (Limited) ("Empire").

4. Defendant Louis L. Levine is the Industrial Commissioner of the New York State Department of Labor ("the Industrial Commissioner"). The Industrial Commissioner has an office in the Southern District of New York for the conduct of official business.

5. The Industrial Commissioner is charged under the laws of the State of New York with the administration of Article 18 of the New York Labor Law ("the Unemployment Insurance Law"). Included among his duties is directing disbursements from the Unemployment Insurance Fund for the payment of benefits to certain striking employees among other claimants.

6. Defendant Norman Gallman is the State Commissioner of Taxation and Finance and, as such, heads the New York State Department of Taxation and Finance. The State Commissioner of Taxation and Finance has an office in the Southern District of New York for the conduct of official business.

7. The State Commissioner of Taxation and Finance is designated under the Unemployment Insurance Law as custodian of the funds requisitioned by the Industrial Commissioner for use in the payment of unemployment insurance benefits to certain striking employees among other claimants.

8. TELCO is an employer subject to the Unemployment Insurance Law and is required thereunder to pay unemployment insurance taxes on compensation paid to its employees.

9. TELCO is also subject to the LMRA and is obligated to bargain collectively, among others, in a New York statewide unit wherein the Communications Workers of Amer-

ica ("CWA" or "International Union") is the certified bargaining representative of certain non-supervisory employees of TELCO and of Empire, its wholly owned subsidiary, including all those employed in TELCO's plant and engineering departments.

10. The collective bargaining agreement entered into in 1968 between CWA and TELCO and Empire was scheduled to expire on July 28, 1971, upon the giving of prior notice. Such notice was given by CWA on or about May 24, 1971 and negotiations for a new contract commenced on July 6, 1971.

11. CWA has labor contracts with various companies in the Bell System throughout the United States in addition to TELCO and Empire. In 1971, as in previous negotiations, the CWA International and the Bell System companies bargained on a pattern basis, with the WECO negotiations selected as one of the two patternmaking negotiations in that year. In such negotiations, once agreement is reached between the CWA International and the patternmaker, settlement usually follows in all CWA bargaining units at all Bell System companies.

12. In the spring of 1971 the various collective bargaining agreements between CWA and the several companies of the Bell System were due to expire on different dates; the earliest was the contract covering WECO installers which expired on April 30, 1971. The agreements which expired prior to July 14, 1971 had been extended on a day-by-day basis to July 14, 1971. As of July 14, 1971,

collective bargaining in connection with new contracts had been in process between CWA and several of the Bell System companies.

13. On July 14, 1971 a nationwide strike by all 500,000 CWA-represented employees was commenced by the International Union against all Bell System companies including TELCO and Empire whose joint contract with CWA had not yet expired.

14. On July 18, 1971 agreements were reached subject to ratification between CWA and the various Bell System companies, including TELCO and Empire, and the CWA ordered all striking employees back to work on or about July 21, 1971.

15. Substantially all of the striking employees of the various Bell System companies throughout the country returned to work on or about July 21, 1971.

16. On and after July 21, 1971 CWA-represented employees of the various Bell System companies in New York continued to stay away from their jobs at the direction of their local unions notwithstanding the order of the International Union that they return to work.

17. On August 14, 1971, the respective agreements between CWA and the various Bell System companies, with the exception of TELCO and Empire, were ratified by the covered employees. The TELCO and Empire employees rejected the contract negotiated on their behalf

notwithstanding the recommendation of the International Union to ratify it.

18. TELCO and Empire employees thereafter continued to strike.

19. On February 16, 1972, CWA-represented employees at TELCO and Empire voted to ratify a contract between CWA and their respective employers. On February 17, 1972, a strike settlement agreement covering both Empire and TELCO was reached providing that all CWA-represented employees would return to work on February 18, 1972.

20. The New York State phase of the aforementioned CWA strike against the Bell System was illegal and was so declared by the respective Administrative Law Judges in two separate cases now pending before the National Labor Relations Board (Case #2-CB-5172 and Case #3-CB-1851-11).

21. Section 592.1 of the Unemployment Insurance Law is entitled "Suspension of Accumulation of Benefit Rights" and provides:

> "Industrial controversy. The accumulation of benefit rights by a claimant shall be suspended during a period of seven consecutive weeks beginning with the day after he lost his employment because of a strike, lockout, or other industrial controversy in the establishment in which he was employed, except that benefit rights may be accumulated before the expiration of

> such seven weeks beginning with the day after such strike, lockout, or other industrial controversy was terminated."

22. During the period of the strike TELCO strikers applied for unemployment insurance benefits and such benefits were granted after the seven-week suspension period provided in Section 592.1 of the Unemployment Insurance Law over the objections of TELCO.

23. Upon information and belief payments of these benefits were made to upwards of 30,000 TELCO employees.

24. The aforementioned payments were made in violation of the United States Constitution under a state statute which conflicts with the federal labor policy established by Congress in the LMRA.

25. The said payment of benefits to the strikers constituted state subsidization of the strike and, upon information and belief, prolonged the strike against TELCO. The strikers were thereby supplied with financial support for their insistence upon and holding out for a settlement which was larger than and different from the one originally negotiated on their behalf by CWA, recommended by that union for adoption and accepted by all of the CWA-represented Bell System employees throughout the United States outside of New York.

26. This unlawful state subsidy amounted to a maximum of $75.00 per week net to each benefited employee.

27. During the 1971-72 strike of TELCO employees about $43,000,000 in benefits were paid to TELCO strikers and charged against TELCO's individual account in the Unemployment Insurance Fund.

28. The balance in TELCO's individual account in September, 1971 prior to the payment of benefits to the strikers was approximately $40,800,000 whereas the account balance as computed in March, 1972 after the strike ended showed a negative balance of about $1,600,000.

29. As a result of the unemployment insurance payments to strikers TELCO'S unemployment insurance normal tax rate increased from 0.9% in 1971, one of the lowest possible tax rates, to 2.3% in 1972, the highest tax rate possible in 1972 for a positive account employer, and to 2.8% in 1973. Upon information and belief, had the aforementioned benefits to strikers not been paid, TELCO's unemployment insurance normal tax rate would have been 0.8% in 1972.

30. The aforesaid increase in its unemployment insurance normal tax rate has caused TELCO to suffer damages in the amount of approximately $6,300,000 through increased unemployment insurance tax payments in 1972. TELCO, unless granted the relief herein prayed for, will be damaged by the additional amount of approximately $9,300,000 in 1973 and thereafter will continue to be damaged by higher unemployment insurance tax payments for many years.

31. Upon information and belief, the payment of benefits pursuant to Section 592.1 of the Unemployment Insurance Law prolonged the strike and severely burdened certain aspects of telephone service, including the repair, maintenance and installation of telephone equipment.

32. The LMRA guarantees to parties covered thereby the right to engage in free collective bargaining without state interference or state subsidization of any party as against another.

33. The payment by defendants of unemployment insurance benefits pursuant to Section 592.1 of the Unemployment Insurance Law deprived TELCO of said right, frustrated substantially the federal policy of free collective bargaining, constituted an unlawful intrusion by the State of New York into an area preempted by the LMRA, and forced TELCO into financing a strike against itself—all in violation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution. Consequently, TELCO has suffered irreparable injury for which there is no adequate remedy at law.

AS A SECOND CAUSE OF ACTION:

34. Plaintiff WECO is a domestic corporation organized and existing under the laws of the State of New York with its principal place of business in the Southern District of New York.

35. Plaintiff WECO repeats and realleges each and every allegation in paragraphs "3", "4", "5", "6", and "7" of this complaint; and further alleges:

36. WECO is an employer subject to the Unemployment Insurance Law and is required thereunder to pay unemployment insurance taxes on compensation paid to its employees.

37. WECO is subject to the LMRA and is obligated to bargain collectively with CWA, the certified bargaining representative of certain of its employees.

38. WECO installers, job clerks and service center employees are represented exclusively by CWA in separate nationwide bargaining units. Collective bargaining between WECO and its employees is conducted on a nationwide basis by CWA.

39. The agreement between the installers and WECO due to expire on April 30, 1971, was extended on a day-by-day basis subject to termination by giving 24-hours written notice. Such notice was given by CWA on June 12, 1971 and collective bargaining negotiations ensued.

40. Plaintiff WECO repeats and realleges each and every allegation in paragraphs "11" and "12" of this complaint.

41. On July 14, 1971 CWA commenced a nationwide strike against all Bell System companies including WECO.

42. On July 18, 1971 CWA and WECO entered into a collective bargaining agreement subject to ratification. CWA's Executive Board voted to terminate the strike pending such ratification and ordered all striking employees back to work on or about July 21, 1971.

43. Substantially all of the striking employees at WECO throughout the country returned to work on or about July 21, 1971, except those in New York State.

44. On and after July 21, 1971 substantially all CWA-represented employees at WECO in New York State, except manufacturing employees, continued to stay away from their jobs, notwithstanding the order of the International Union that they return to work.

45. On August 14, 1971 CWA-represented employees at WECO in New York and elsewhere in the nation ratified new collective bargaining agreements which were not due to expire until 1974.

46. Each such agreement contained a no-strike clause which provided:

> "No officer, representative or member of the Union shall authorize, instigate, condone or engage in a strike, work stoppage or interruption of work operations, including absences to attend Union meetings that would have the same effect as a strike or work stoppage, during the period of this contract."

47. After August 14, 1971, notwithstanding the ratification of said agreements, the termination of the strike by CWA and the return to work of all of its members employed by WECO elsewhere, substantially all WECO employees in New York State, except those in manufacturing, continued to stay away from their jobs.

48. Such striking employees returned to work after termination of the TELCO strike on or about February 17, 1972.

49. Plaintiff WECO repeats and realleges each and every allegation in paragraph "21" of this complaint.

50. During the period of the strike WECO strikers applied for unemployment insurance benefits and such benefits were granted after the seven-week suspension period provided in Section 592.1 of the Unemployment Insurance Law over the objections of WECO.

51. Upon information and belief, payments of these benefits were made to upwards of 4,500 WECO employees.

52. The aforementioned payments were made in violation of the United States Constitution under a state statute which conflicts with the federal labor policy established by Congress in the LMRA.

53. The said payment of benefits to the strikers constituted state subsidization of the strike and, upon information and belief, prolonged the strike against WECO.

The strikers were thereby supplied with financial support for their insistence upon and holding out for a settlement which was larger than and different from the one originally negotiated on their behalf by CWA, recommended by that union for adoption and accepted by all of the CWA-represented Bell System employees throughout the United States outside of New York.

54. Plaintiff WECO repeats and realleges each and every allegation in paragraph "26" of this complaint.

55. During the 1971-72 strike of WECO employees, about $5,000,000 in benefits were paid to WECO strikers and charged against WECO's individual account in the Unemployment Insurance Fund.

56. The balance in WECO's individual account in September, 1971 prior to the payment of benefits to the strikers was approximately $6,400,000, whereas the account balance as computed in March, 1972 after the strike ended showed a balance of about $1,700,000.

57. As a result of the unemployment insurance payments to strikers, WECO's unemployment insurance normal tax rate increased from 0.7% in 1971, the lowest possible normal tax rate in that year, to 2.1% in 1972, one of the highest tax rates possible in 1972 for a positive account employer, and to 2.5% in 1973. Upon information and belief, had the aforementioned benefits to strikers not been paid, WECO's unemployment insurance normal tax rate would have been 0.7% in 1972.

58. The aforesaid increase in its unemployment insurance normal tax rate has caused WECO to suffer damages in the amount of approximately $900,000 through increased unemployment insurance tax payments in 1972. WECO, unless granted the relief herein prayed for, will be damaged by the additional amount of approximately $1,200,000 in 1973 and thereafter will continue to be damaged by higher unemployment insurance tax payments for many years.

59. Plaintiff WECO repeats and realleges each and every allegation in paragraph "31" of this complaint.

60. The LMRA guarantees to parties covered thereby the right to engage in free collective bargaining without state interference or state subsidization of any party as against another.

61. The payment by defendants of unemployment insurance benefits pursuant to Section 592.1 of the Unemployment Insurance Law deprived WECO of said right, frustrated substantially the federal policy of free collective bargaining, constituted an unlawful intrusion by the State of New York into an area preempted by the LMRA, and forced WECO into financing a strike against itself—all in violation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution. Consequently, WECO has suffered irreparable injury for which there is no adequate remedy at law.

AS A THIRD CAUSE OF ACTION:

62. Plaintiff AT&T is a domestic corporation organized and existing under the laws of the State of New York with its principal place of business in the Southern District of New York.

63. Plaintiff AT&T repeats and realleges each and every allegation in paragraphs "3", "4", "5", "6", and "7" of this complaint; and further alleges:

64. AT&T is an employer subject to the Unemployment Insurance Law and is required thereunder to pay unemployment insurances taxes on compensation paid to its employees.

65. AT&T is subject to the LMRA and is obligated thereunder to bargain collectively with CWA, the certified bargaining representative of certain of its employees.

66. The collective bargaining agreement between AT&T and CWA was due to expire on July 16, 1971. CWA notified AT&T of its desire to terminate that agreement and negotiations began on a new agreement on or about June 4, 1971.

67. Plaintiff AT&T repeats and realleges each and every allegation contained in paragraphs "11" and "12" of this complaint.

68. On July 14, 1971 CWA-represented employees struck AT&T as authorized by a nationwide strike vote of all

CWA-represented employees employed by Bell System companies.

69. On July 18, 1971 CWA reached an agreement with AT&T and the CWA Executive Board voted to terminate the strike pending ratification thereof and ordered the employees back to work on or about July 21, 1971.

70. Substantially all of the CWA-represented employees at AT&T throughout the country returned to work on or about July 21, 1971.

71. Certain AT&T employees in New York State refused to return to work.

72. On August 14, 1971 CWA-represented employees at AT&T ratified the new agreement negotiated on their behalf.

73. After August 14, 1971, notwithstanding the ratification of said agreement, the termination of the strike by CWA and the return to work of substantially all of its members employed at AT&T, certain CWA-represented employees at AT&T in New York continued to remain away from their jobs.

74. Many of such striking employees remained away from work until the termination of the TELCO strike on or about February 17, 1972.

75. Plaintiff AT&T repeats and realleges each and every allegation in paragraph "21" of this complaint.

76. During the period of the strike AT&T strikers applied for unemployment insurance benefits and such benefits were granted after the seven-week suspension period provided in Section 592.1 of the Unemployment Insurance Law over the objections of AT&T.

77. Upon information and belief, payments of these benefits were made to approximately 300 AT&T employees.

78. The aforementioned payments were made in violation of the United States Constitution under a state statute which conflicts with the federal labor policy established by Congress in the LMRA.

79. The said payment of benefits to the strikers constituted state subsidization of the strike and, upon information and belief, prolonged the strike against AT&T. The strikers were thereby supplied with financial support for their insistence upon and holding out for a settlement which was larger than and different from the one originally negotiated on their behalf by CWA, recommended by that union for adoption and accepted by all of the CWA-represented Bell System employees throughout the United States outside of New York.

80. Plaintiff AT&T repeats and realleges each and every allegation in paragraph "26" of this complaint.

81. During the 1971-72 strike of AT&T employees about $470,000 in benefits were paid to AT&T strikers and charged against AT&T's individual account in the Unemployment Insurance Fund.

82. The balance in AT&T's individual account in September, 1971 prior to the payment of benefits to the strikers was approximately $5,600,000, whereas the account balance as computed in March, 1972 after the strike ended showed a balance of about $5,000,000.

83. As a result of the unemployment insurance payments to strikers, AT&T's unemployment insurance normal tax rate increased from 0.8% in 1971, one of the lowest possible normal tax rates, to 1.0% in 1972 and to 0.9% in 1973. Upon information and belief, had the aforementioned benefits to strikers not been paid, AT&T's unemployment insurance normal tax rate would have been 0.9% in 1972.

84. The aforesaid increase in its unemployment insurance normal tax rate has caused AT&T to suffer damages in the amount of approximately $60,000 through increased unemployment insurance tax payments in 1972. AT&T, unless granted the relief herein prayed for, will be damaged by the additional amount of approximately $130,000 in 1973 and thereafter will continue to be damaged by higher unemployment insurance tax payments for many years.

85. Plaintiff AT&T repeats and realleges each and every allegation in paragraph "31" of this complaint.

86. The LMRA guarantees to parties covered thereby the right to engage in free collective bargaining without state interference or state subsidization of any party as against another.

87. The payment by defendants of unemployment insurance benefits pursuant to Section 592.1 of the Unemployment Insurance Law deprived AT&T of said right, frustrated substantially the federal policy of free collective bargaining, constituted an unlawful intrusion by the State of New York into an area preempted by the LMRA, and forced AT&T into financing a strike against itself—all in violation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution. Consequently, AT&T has suffered irreparable injury for which there is no adequate remedy at law.

AS A FOURTH CAUSE OF ACTION:

88. Plaintiff Empire is a domestic corporation organized and existing under the laws of the State of New York with its principal place of business in the Southern District of New York.

89. Plaintiff Empire repeats and realleges each and every allegation in paragraphs "3", "4", "5", "6" and "7" of this complaint; and further alleges:

90. Empire is an employer subject to the Unemployment Insurance Law and is required thereunder to pay unemployment insurance taxes on compensation paid to its employees.

91. Empire is subject to the LMRA and is obligated to bargain collectively with CWA, the certified bargaining representative of its non-supervisory employees.

92. Collective bargaining for represented Empire employees is conducted with CWA in multi-employer negotiations involving TELCO and Empire, resulting in a single collective bargaining agreement covering the CWA-represented employees of both employers.

93. Plaintiff Empire repeats and realleges each and every allegation in paragraphs "10", "11", "12", "13", "14", "15" "16" "17" "18" "19", and "21" of this complaint.

94. During the period of the strike Empire strikers applied for unemployment insurance benefits and such benefits were granted after the seven-week suspension period provided in Section 592.1 of the Unemployment Insurance Law over the objections of Empire.

95. Upon information and belief payments of these benefits were made to upwards of approximately 150 Empire employees.

96. The aforementioned payments were made in violation of the United States Constitution under a state statute which conflicts with the federal labor policy established by Congress in the LMRA.

97. The said payment of benefits to the strikers constituted state subsidization of the strike and, upon information and belief, prolonged the strike against Empire. The strikers were thereby supplied with financial support for their insistence upon and holding out for a settlement which was larger than and different from the one originally

negotiated on their behalf by CWA, recommended by that union for adoption and accepted by all of the CWA-represented Bell System employees throughout the United States ouside of New York.

98. Plaintiff Empire repeats and realleges each and every allegation in paragraph "26" of this complaint.

99. During the 1971-72 strike of Empire employees approximately $103,000 in benefits were paid to Empire strikers and charged against Empire's individual account in the Unemployment Insurance Fund.

100. The balance in Empire's individual account in September, 1971 prior to the payment of benefits to the strikers was approximately $119,000 whereas the account balance as computed in March, 1972 after the strike ended showed a balance of about $27,000.

101. As a result of the unemployment insurance payments to strikers, Empire's unemployment insurance normal tax rate increased from 1.7% in 1971 to 2.3% in 1972, the highest tax rate possible in 1972, and 2.7% in 1973. Upon information and belief, had the aforementioned benefits to strikers not been paid, Empire's unemployment insurance normal tax rate would have been 1.5% in 1972.

102. The aforesaid increase in its unemployment insurance tax rate has caused Empire to suffer damages in the amount of upwards of $13,000 through increased unemployment insurance tax payments in 1972. Empire, unless

granted the relief herein prayed for, will be damaged by the additional amount of upwards of $23,000 in 1973 and thereafter will continue to be damaged by higher unemployment insurance tax payments for many years.

103. Plaintiff Empire repeats and realleges each and every allegation in paragraph "31" of this complaint.

104. The LMRA guarantees to parties covered thereby the right to engage in free collective bargaining without state interference or state subsidization of any party as against another.

105. The payment by defendants of unemployment insurance benefits pursuant to Section 592.1 of the Unemployment Insurance Law deprived Empire of said right, frustrated substantially the federal policy of free collective bargaining, constituted an unlawful intrusion by the State of New York into an area preempted by the LMRA, and forced Empire into financing a strike against itself—all in violation of the Supremacy Clause, Article VI, Clause 2, of the United States Constitution. Consequently, Empire has suffered irreparable injury for which there is no adequate remedy at law.

AS A FIFTH CAUSE OF ACTION:

106. Plaintiffs repeat and reallege each and every allegation in paragraphs "2" through "105" of this complaint; and further allege:

107. Plaintiffs, by virtue of the payment of unemployment insurance benefits to strikers, have suffered the imposition of large debits to their respective unemployment insurance accounts as well as the levying against each of them of vastly increased unemployment insurance taxes. Thereby each of the plaintiffs has been and is being deprived of their property without due process of law in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

AS A SIXTH CAUSE OF ACTION:

108. Plaintiffs repeat and reallege each and every allegation in paragraphs "2" through "105" of this complaint; and further allege:

109. The payment of unemployment insurance benefits to strikers pursuant to Section 592.1 of the Unemployment Insurance Law is an unreasonable and arbitrary classification of strikers as distinguished from other claimants voluntarily unemployed in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

1. That Section 592.1 of the Unemployment Insurance Law, providing for payment of benefits to strikers after the seventh week of a strike, be declared unconstitutional on the grounds that it violates the Supremacy Clause of Article VI, Clause 2 of the United States Constitution and the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

2. That the court issue a permanent injunction enjoining defendants, their successors in office, agents, employees, and all other persons attempting or purporting to do so, from interfering with the parties' collective bargaining relationships and their right to engage in free collective bargaining without unlawful state subsidization of either party.

3. That the court issue a permanent injunction enjoining the defendants, their successors in office, agents, employees, and all other persons attempting or purporting to do so, from (a) enforcing Section 592.1 of the Unemployment Insurance Law, (b) authorizing the payment of unemployment insurance benefits to strikers and (c) drawing vouchers on the accounts maintained to effectuate the payment of such benefits.

4. That the court issue a permanent injunction requiring the defendants, their successors in office, agents, employees, and all other persons empowered to do so, to recredit plaintiffs' respective unemployment insurance accounts, retroactive to the commencement of benefit payments to strikers in 1971, for the amounts paid out in unemployment insurance benefits as a result of the 1971-1972 strike and requiring them to readjust plaintiffs' unemployment insurance normal tax rates for each and every year since 1971 in light of such credits.

5. That the court award plaintiffs recoupment of the monies which have and will have been paid as increased unemployment insurance tax payments under the increased

normal tax rates which became effective on and after January 1, 1972.

6. That the plaintiffs may recover interest according to law and the costs of this action.

7. That the plaintiffs be granted such other and further relief as the court may deem just and proper.

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Answer

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 4557

Judge Griesa

NEW YORK TELEPHONE COMPANY, WESTERN ELECTRIC COMPANY, AMERICAN TELEPHONE & TELEGRAPH COMPANY, LONG LINES DEPARTMENT, and EMPIRE CITY SUBWAY COMPANY (LIMITED),

Plaintiffs,

—against—

NEW YORK STATE DEPARTMENT OF LABOR, LOUIS L. LEVINE, Industrial Commissioner of the New York State Department of Labor, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, and NORMAN GALLMAN, State Commissioner of Taxation & Finance,

Defendants.

The defendants for their answer to the complaint:

1. Deny so much of paragraph "1" as alleges that any provision of Article 18 of the New York Labor Law is for any reason invalid and deny further so much of that paragraph as alleges that this Court has jurisdiction of the action.

Answer

2-3. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs "2" and "3".

4. Admit the allegations of paragraph "4".

5. Admit the allegations of the first sentence of paragraph "5" and admit the allegations of the second sentence of that paragraph insofar as it alleges that the Industrial Commissioner directs the distribution of unemployment insurance benefits to eligible claimants.

6. Deny the allegation of the first sentence of paragraph "6" and allege that Mario Procaccino is the State Commissioner of Taxation and Finance. Admit the allegations of the second sentence of paragraph "6".

7. Admit the allegations of paragraph "7" insofar as they state that the State Commissioner of Taxation and Finance is designated under the Unemployment Insurance Law as custodian of the funds requisitioned by the Industrial Commissioner for payment to eligible claimants.

8. Admit the allegations of paragraph "8" insofar as they state that TELCO is an employer subject to the Unemployment Insurance Law and is required thereunder to pay unemployment insurance taxes and allege that these taxes are paid on certain wages pursuant to New York Labor Law, § 570.

9. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "9".

Answer

10-12. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs "10", "11" and "12".

13. Admit, upon information and belief, the allegations of paragraph "13" except deny knowledge or information sufficient to form a belief as to the number of employees involved.

14. Admit, upon information and belief, the allegations of paragraph "14" except deny knowledge or information sufficient to form a belief as to whether the CWA ordered all striking employees back to work on or about July 21, 1971.

15-16. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs "15" and "16".

17. Admit, upon information and belief, the allegations of paragraph "17".

18. Admit, upon information and belief, the allegations of paragraph "18" except deny knowledge or information sufficient to form a belief as to the number of employees who continued the strike.

19. Admit, upon information and belief, the allegations of paragraph "19".

20. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "20".

Answer

21. With respect to the allegations of paragraph "21" respectfully refer the Court to the appropriate published statute.

22. Admit the allegations of paragraph "22" except deny knowledge or information sufficient to form a belief as to the percentage of TELCO employees who applied for and who received unemployment insurance.

23. Deny the allegations of paragraph "23" and allege that approximately 28,000 TELCO employees were paid unemployment insurance.

24-26. Deny the allegations of paragraphs "24" to "26".

27. Admit the allegations of paragraph "27" insofar as they state that during the 1971-72 strike of TELCO employees, about $43,000,000 in benefits were paid to TELCO strikers and otherwise respectfully refer the Court to New York Labor Law, § 581.

28. Admit the allegations of paragraph "29" except allege that the balance shown in the TELCO account in September, 1971 was $41,210,497.61 and that the balance shown in March, 1972 was a negative balance of $1,351,194.75 and further allege that balances in an employer's account established pursuant to New York Labor Law, § 581.1(d) do not reflect cash available but reflect a balance for the computation of tax rates.

29. Deny the allegations of paragraph "29" except admit that the tax rates set forth in the first sentence thereof are accurate.

30-31. Deny the allegations of paragraphs "30" and "31".

32. Deny the allegations of paragraph "32" and respectfully refer the Court to the applicable statute.

33. Deny the allegations of paragraph "33".

34. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "34".

35. With respect to paragraph "35" repeat and realleges each and every response in paragraphs "3", "4", "5", "6", and "7" of this answer to paragraphs "3", "4", "5", "6" and "7" of the complaint.

36. Admit the allegations of paragraph "36" insofar as they state that WECO is an employer subject to the Unemployment Insurance Law and is required thereunder to pay unemployment insurance taxes and allege that these taxes are paid on certain wages pursuant to New York Labor Law, § 570.

37. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "37".

38-39. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs "38" and "39".

40. With respect to paragraph "40" repeat and reallege each and every response in paragraphs "11" and "12" of this answer to paragraphs "11" and "12" of the complaint.

41. Admit, upon information and belief, the allegations of paragraph "41".

42. Admit, upon information and belief, the allegations of paragraph "42" except deny knowledge or information sufficient to form a belief as to whether the CWA ordered all striking employees back to work on or about July 21, 1971.

43-44. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs "43" and "44".

45-46. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs "45" and "46".

47. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "47" except admit that after August 14, 1971 many WECO employees stayed away from work.

48. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "48".

49. With respect to paragraph "49" repeat and reallege each and every response in paragraph "21" of this answer to paragraph "21" of the complaint.

50. Admit the allegations of paragraph "50" insofar as they assert that many WECO employees applied for and were granted unemployment insurance benefits over WECO's objection.

51. Admit the allegations of paragraph "51" except allege that benefits were paid to 3,800 WECO employees.

52-53. Deny the allegations of paragraphs "52" and "53".

54. With respect to paragraph "54" repeat and reallege each and every response in paragraph "26" of this answer to paragraph "26" of the complaint.

55. Deny the allegations of paragraph "55" except admit that during the period in question about $5 million was paid to WECO employees and charged in accordance with the provisions of New York Labor Law, § 581.

56. Deny the allegations of paragraph "56" except admit that during the period in question there was a reduction of about $5 million in the account balance of WECO.

57. Deny the allegations of paragraph "57" except admit that the tax rates set forth in the first sentence thereof are accurate.

58. Deny the allegations of paragraph "58".

59. With respect to paragraph "59" repeat and reallege each and every response in paragraph "31" of this answer to paragraph "31" of the complaint.

60. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "60".

61. Deny the allegations of paragraph "61".

62. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "62".

63. With respect to paragraph "63" repeat and reallege each and every response in paragraphs "3", "4", "5", "6"

and "7" of this answer to paragraphs "3", "4", "5", "6" and "7" of the complaint.

64. Admit the allegations of paragraph "64" insofar as they state that A T & T is an employer subject to the Unemployment Insurance Law and is required thereunder to pay unemployment insurance taxes and allege that these taxes are paid on certain wages pursuant to New York Labor Law, § 570.

65-66. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs "65" and "66".

67. With respect to paragraph "67" repeat and reallege each and every response in paragraphs "11" and "12" of this answer to paragraphs "11" and "12" of the complaint.

68-69. Admit, upon information and belief, the allegations of paragraphs "68" and "69".

70. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "70".

71-72. Admit, upon information and belief, the allegations of paragraphs "71" and "72".

73. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "73" except admit that after August 14, 1971 certain A T & T employees in New York remained away from their jobs.

74. Deny the allegations of paragraph "74" except admit that some A T & T employees remained away from their jobs until on or about February 17, 1972.

Answer

75. With respect to paragraph "75" repeat and reallege each and every response in paragraph "21" of this answer to paragraph "21" of the complaint.

76. Admit the allegations of paragraph "76" insofar as they assert that some A T & T employees applied for and were granted unemployment insurance benefits over A T & T's objection.

77. Admit the allegations of paragraph "77" except allege that benefits were paid to approximately 400 A T & T employees.

78-79. Deny the allegations of paragraphs "78" and "79".

80. With respect to paragraph "80" repeat and reallege each and every response in paragraph "26" of this answer to paragraph "26" of the complaint.

81. Deny the allegations of paragraph "81" except admit that during the period September 12, 1971 to February 27, 1972 unemployment insurance benefits were paid to A T & T employees and allege that the total amount paid during this period was $524,295.65.

82. Deny the allegations of paragraph "82" except admit that during the period in question there was a reduction of about $500,000 in the account balance of A T & T.

83. Deny the allegations of paragraph "83" except admit that the tax rates set forth in the first sentence thereof are accurate.

Answer

84. Deny the allegations of paragraph "84".

85. With respect to paragraph "85" repeat and reallege each and every response in paragraph "31" of this answer to paragraph "31" of the complaint.

86. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "86".

87. Deny the allegations of paragraph "87".

88. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "88".

89. With respect to paragraph "89" repeat and reallege each and every response in paragraphs "3", "4", "5", "6" and "7" of this answer to paragraphs "3", "4", "5", "6" and "7" of the complaint.

90. Admit the allegations of paragraph "90" insofar as they state that Empire is an employer subject to the Unemployment Insurance Law and is required thereunder to pay unemployment insurance taxes and allege that these taxes are paid on certain wages pursuant to New York Labor Law, § 570.

91-92. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs "91" and "92".

93. With respect to paragraph "93" repeat and reallege each and every response in paragraphs "10", "11", "12", "13", "14", "15", "16", "17", "18", "19" and "21" of this answer to paragraphs "10", "11", "12", "13", "14", "15", "16", "17", "18", "19" and "21" of the complaint.

Answer

94. Admit the allegations of paragraph "94" insofar as they assert that there was Empire employees who applied for and were granted unemployment insurance benefits over Empire's objection.

95. Admit the allegations of paragraph "95" except allege that benefits were paid to approximately 100 Empire employees.

96-97. Deny the allegations of paragraphs "96" and "97".

98. With respect to paragraph "98" repeat and reallege each and every response in paragraph "26" of this answer to paragraph "26" of the complaint.

99. Deny the allegations of paragraph "99" except admit that during the period in question an estimated $98,786.58 was paid to Empire employees and charged in accordance with the provisions of New York Labor Law, § 581.

100. Deny the allegations of paragraph "100" except admit that during the period in question there was a reduction from an estimated $108,777.66 to $22,130.48 in the account balance of Empire.

101. Deny the allegations of paragraph "101" except admit that the tax rates set forth in the first sentence thereof are accurate except that the 1971 tax rate for Empire was 1.5%.

102. Deny the allegations of paragraph "102".

Answer

103. With respect to paragraph "103", repeat and reallege each and every response in paragraph "31" of the answer to paragraph "31" of the complaint.

104. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "104".

105. Deny the allegations of paragraph "105".

106. With respect to paragraph "106", repeat and reallege each and every response in paragraphs "2" through "105" of this answer to paragraphs "2" through "105" of the complaint.

107. Deny the allegations of paragraph "107".

108. With respect to paragraph "108" repeat and reallege each and every response in paragraphs "2" through "105" of this answer to paragraphs "2" through "105" of the complaint.

109. Deny the allegations of paragraph "109".

FIRST AFFIRMATIVE DEFENSE

110. The Court lacks jurisdiction over the subject matter of this action.

SECOND AFFIRMATIVE DEFENSE

111. The complaint fails to state a claim on which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

112. Defendants have violated no constitutional right of plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

113. Defendants have violated no statutory right of plaintiffs.

FIFTH AFFIRMATIVE DEFENSE

114. The complaint fails to set forth a justiciable controversy.

SIXTH AFFIRMATIVE DEFENSE

115. Plaintiffs have failed to exhaust their administrative and judicial remedies.

SEVENTH AFFIRMATIVE DEFENSE

116. Plaintiffs have suffered no damage by virtue of any action of defendants.

EIGHTH AFFIRMATIVE DEFENSE

117. New York Labor Law, § 592.1 embodies the principle of governmental neutrality in industrial controversies and is consonant with the Constitution and laws of the United States.

NINTH AFFIRMATIVE DEFENSE

118. The instant action is res judicata as against plaintiffs.

TENTH AFFIRMATIVE DEFENSE

119. The instant action is barred by collateral estoppel.

WHEREFORE, defendants demand judgment dismissing the complaint together with the costs of this action.

Dated: New York, New York
December 10, 1973

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Pre-Trial Order

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 4557 (R.O.)

NEW YORK TELEPHONE COMPANY, WESTERN ELECTRIC COMPANY, AMERICAN TELEPHONE & TELEGRAPH COMPANY, LONG LINES DEPARTMENT, and EMPIRE CITY SUBWAY COMPANY (LIMITED),

Plaintiffs,

—against—

NEW YORK STATE DEPARTMENT OF LABOR, LOUIS L. LEVINE, Industrial Commissioner of the New York State Department of Labor, NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE, and JAMES H. TULLY, JR., State Commissioner of Taxation & Finance,

Defendants.

On November 12, 1975, the parties in this action, by their attorneys, appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure, and the following was agreed:

I. JURISDICTIONAL STATEMENT

It is alleged that this Court has jurisdiction of the action under 28 U.S.C. § 1331, 28 U.S.C. § 1337 and 28 U.S.C. § 1343; and that the matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000) in respect to each of the plaintiffs.

II. AMENDMENT OF PLEADINGS

1. The pleadings were agreed to be deemed amended in accordance with the framing of the issues in Part IX of this pre-trial order.

2. The parties agreed that the trial of this action should be based upon this order and upon the pleadings as amended.

III. UNDISPUTED FACTS

The parties stipulated that the following facts are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues):

1. Plaintiffs New York Telephone Company ("TELCO"), Western Electric Company ("WECO"), and Empire City Subway Company (Limited) ("Empire") are domestic corporations organized and existing under the laws of the State of New York, each with its principal place of business in the Southern District of New York. American Telephone & Telegraph Company is a domestic corporation organized and existing under the laws of the State of New York. Plaintiff American Telephone & Telegraph Company, Long Lines Department ("AT&T")* is a department of

* All references to "AT&T" herein refer to American Telephone & Telegraph Company, Long Lines Department, unless otherwise noted.

American Telephone & Telegraph Company having its principal place of business in the Southern District of New York.

2. For the purposes of this lawsuit, the term "Bell System" shall be understood to encompass the American Telephone and Telegraph Company, the twenty-one principal telephone operating companies owned, in whole or in major part by American Telephone and Telegraph Company and such other companies as WECO and Bell Telephone Laboratories, Inc. ("Bell Labs"). The term as so understood includes all plaintiffs.

3. TELCO is an operating company within the Bell System providing telephone communications services within the State of New York.

4. WECO is a manufacturing and supply unit of the Bell System.

5. AT&T is engaged in interstate and international communications services.

6. Empire, a wholly owned subsidiary of TELCO, constructs and maintains conduits and manholes in the New York City boroughs of Manhattan and the Bronx through which telephone cable is laid.

7. Defendant Louis L. Levine is the Industrial Commissioner of the New York State Department of Labor (the "Industrial Commissioner"). The Industrial Commissioner has an office in the Southern District of New York for the conduct of official business.

8. The Industrial Commissioner is charged under the laws of the State of New York with the administration of Article 18 of the New York Labor Law (the "Unemployment Insurance Law"). Included among his duties is directing disbursements from the Unemployment Insurance Fund for the payment of benefits to eligible claimants, which may include individuals who are on strike.

9. James H. Tully, Jr., is the State Commissioner of Taxation and Finance and, as such, heads the New York State Department of Taxation and Finance. Mr. Tully should be and, with the Court's approval, hereby is substituted as a defendant in this action in place of his predecessors, Messrs. Galman and Procaccino. The State Commissioner of Taxation and Finance has an office in the Southern District of New York for the conduct of official business.

10. The State Commissioner of Taxation and Finance is designated under the Unemployment Insurance Law as custodian of the funds requisitioned by the Industrial Commissioner for use in the payment of unemployment insurance benefits to eligible claimants, which may include individuals who are on strike.

11. There is no source, other than employer contributions mandated by the Unemployment Insurance Law and federal funds of the funds in New York State from which:

(a) Unemployment insurance benefits are paid; or

(b) Refunds of overpayments of employer contributions to the Unemployment Insurance Fund are made.

12. At all times material herein, TELCO, WECO, AT&T, and Empire were and are employers subject to the Unemployment Insurance Law and were and are required thereunder to pay unemployment insurance contributions on wages paid to their employees.

13. At all times material herein, TELCO and Empire were subject to the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 151 *et seq.* ("LMRA") and were obligated to bargain collectively with the Communications Workers of America ("CWA" or "International Union") concerning certain non-supervisory employees of TELCO and Empire in a single statewide bargaining unit, resulting in a single statewide collective bargaining agreement. In March of 1971, more than 38,000 TELCO employees were represented by CWA.

14. In March 1971, the Telephone Traffic Union Downstate represented approximately 20,337 TELCO non-supervisory employees; the Telephone Traffic Union Upstate represented approximately 5,646 TELCO nonsupervisory employees; the Union of Telephone Workers (Commercial Department Downstate) represented approximately 8,629 TELCO non-supervisory employees; the Telephone Employees Organization (Accounting Department Downstate) represented approximately 4,071 TELCO non-supervisory em-

ployees; the Telephone Commercial Union (Upstate) represented approximately 1,804 TELCO non-supervisory employees; and the Upstate Telephone Employees Association (Accounting Department) represented approximately 1,142 TELCO non-supervisory employees. The unions named in this paragraph represented a total of approximately 41,629 TELCO employees.

15. At all times material herein, WECO was subject to the LMRA and was obligated to bargain collectively with CWA concerning WECO installers, job clerks and service center employees, respectively, in separate nationwide collective bargaining units. Collective bargaining between WECO and such employees resulted in separate companywide collective bargaining agreements for each such bargaining unit.

16. At all times material herein, AT&T was subject to the LMRA and was obligated to bargain collectively with CWA concerning all AT&T non-supervisory employees. Bargaining for such AT&T employees is conducted in a nationwide collective bargaining unit resulting in a single nationwide collective bargaining agreement.

17. The collective bargaining agreement entered into in 1968 between CWA and TELCO and Empire was scheduled to expire on July 28, 1971, upon the giving of prior notice. Such notice was given by CWA on or about May 24, 1971, and negotiations for a new contract commenced on July 6, 1971.

18. The collective bargaining agreement between the installers and WECO due to expire on April 30, 1971, was extended on a day-by-day basis subject to termination by giving 24 hours written notice. Such notice was given by CWA on or about July 12, 1971. Collective bargaining negotiations had commenced on April 1, 1971.

19. The collective bargaining agreement between AT&T and CWA was due to expire on July 16, 1971. On or about May 10, 1971, CWA notified AT&T of its desire to terminate that agreement and negotiations began on a new agreement on or about June 4, 1971.

20. CWA has labor contracts with twenty-three companies in the Bell System throughout the United States, including, among others, each of the plaintiffs, Chesapeake & Potomac Telephone Company—Washington ("C&P"), The Mountain States Telephone and Telegraph Company ("Mountain States") and Bell Labs.

21. In the spring of 1971 the various collective bargaining agreements between CWA and the several companies of the Bell System were due to expire on different dates; the earliest was the contract covering WECO installers. The agreements which expired prior to July 14, 1971, had been extended on a day-by-day basis to July 14, 1971. As of July 14, 1971, collective bargaining in connection with new contracts had been in process between CWA and all of the Bell System companies having collective bargaining agreements with CWA.

22. On July 14, 1971, a nationwide strike by CWA, which then represented approximately 500,000 Bell System employees, was commenced against all Bell System companies, including TELCO, WECO, AT&T and Empire.

23. On July 18, 1971, agreements were reached, subject to ratification by the covered employees, between CWA and the various Bell System companies, including TELCO, WECO, AT&T and Empire. CWA's Executive Board voted to terminate the strike pending such ratification and ordered all striking employees back to work effective on or about July 21, 1971.

24. Between approximately 96 and 98 per cent of the striking employees of the various Bell System companies throughout the country, including substantially all of the striking employees of WECO and AT&T, nationwide, returned to work on or about July 21, 1971.

25. On and after July 21, 1971, and until the termination of the strike on February 18, 1972, CWA-represented employees employed by plaintiffs in New York, including between approximately 85 and 90 percent of employees scheduled to work at TELCO, substantially all such employees at WECO (except manufacturing employees), and certain of such employees at AT&T continued to stay away from their jobs at the direction of their local unions. Between July 21, 1971, and August 14, 1971, more than 90% of the CWA-represented TELCO employees continued to stay away from work.

26. On August 14, 1971, the respective agreements between CWA and the various Bell System companies including WECO and AT&T, but with the exception of TELCO and Empire, were ratified by the covered employees. The TELCO and Empire employees rejected the contract negotiated on their behalf. The International Union had recommended ratification of said contract.

27. In a letter dated August 27, 1971, CWA President Joseph A. Beirne advised all members of CWA's Executive Board and all CWA National Directors that he had set August 26, 1971, as the strike date for the New York Plant unit. This was pursuant to the Executive Board's authorization to set a strike date for any bargaining unit which rejected their CWA-negotiated contract on August 14, 1971.

28. Approximately 38,000 employees represented by CWA participated in CWA's strike against TELCO for varying periods of time between July 14, 1971, and February 18, 1972.

29. Approximately 41,000 TELCO employees represented by unions other than CWA did not participate in CWA's strike against TELCO.

30. About 90% of the approximately 5,500 AT&T employees in Manhattan and Westchester, Nassau and Suffolk Counties (represented by CWA Local 1150) and about 95% of the approximately 600 employees at WECO's Service Division's facility located on West Houston Street in Manhattan (represented by CWA

Local 1196), one of three such facilities located in New York State, had returned to work before the eighth week of the CWA strike.

31. On February 16, 1972, CWA-represented employees at TELCO and Empire voted to ratify a contract between CWA and their respective employers. On February 17, 1972, a strike settlement agreement covering both Empire and TELCO was reached providing that all CWA-represented employees would return to work on February 18, 1972.

32. The TELCO phase of the aforementioned CWA strike against Bell System was declared by the National Labor Relations Board ("NLRB"), in two separate cases (Case #2-CB-5172, et al., 208 NLRB No. 32, 85 LRRM 1122, and Case #3-CB-1851-11, et al., 208 NLRB No. 31, 85 LRRM 1104), to be illegal because the union had failed to give 60 days notice of proposed modification or termination of the contract in violation of §8(d) of the LMRA. The NLRB also held therein that, because of the illegality of the strike, fines imposed by CWA locals on their members who returned to work during the strike also had been illegal.

33. Section 592.1 of the Unemployment Insurance Law is entitled "Suspension of Accumulation of Benefit Rights" and provides:

> "Industrial controversy. The accumulation of benefit rights by a claimant shall be suspended during a period of seven consecutive weeks beginning

with the day after he lost his employment because of a strike, lockout, or other industrial controversy in the establishment in which he was employed, except that benefit rights may be accumulated before the expiration of such seven weeks beginning with the day after such strike, lockout, or other industrial controversy was terminated."

34. Pursuant to the New York State Unemployment Insurance Law, unemployment benefits are paid to strikers and others unemployed due to an industrial controversy after a seven week suspension period, subject to eligibility requirements applicable to all claimants.

35. Pursuant to a stipulation dated June 24, 1974. the parties have agreed, and it has been so ordered by the Court, that the constitutional issues in this case be first and separately tried. On this trial, to the extent that the statistical data contained in the pleadings become pertinent to the constitutional issues, the parties have agreed to use the following data set forth in said stipulation and elsewhere. Defendants have reserved the right to demonstrate that the damages sought are constitutionally or otherwise barred.

a. During the period of the 1971-1972 strike by CWA against plaintiffs and other Bell System companies, which period commenced on July 14, 1971, and terminated on or about February 18-21, 1972, substantial numbers of strikers applied for unemployment benefits and such benefits were paid (after

the 49 day suspension period provided in § 592.1 of the Unemployment Insurance Law and the additional waiting period prescribed in § 590 thereof) to claimants determined to be eligible therefor by the Industrial Commissioner of the State of New York, over the objections of plaintiffs as to their respective employees.

b. Approximately 38,000 employees represented by CWA participated in CWA's strike against TELCO for varying periods of time between July 14, 1971, and February 18, 1972.

c. Approximately 29,000 TELCO employees, 4,150 WECO employees, 350 AT&T employees and 125 Empire employees received unemployment insurance benefits between the week ending September 12, 1971, and the week ending February 27, 1972. Other striking employees did not apply for benefits or were ineligible for unemployment insurance benefits for various reasons such as temporary employment elsewhere, inability to demonstrate a sufficient recent attachment to the labor market by showing employment in at least 20 of the last 52 weeks, sickness or disability, etc.

d. During the 1971-1972 CWA strike about $43,000,000 in unemployment insurance benefits were paid to TELCO strikers and about $100,000 in such benefits were paid to Empire strikers and charged against these plaintiffs' respective accounts in the Unemployment Insurance Fund.

e. Between the week ending September 12, 1971, and the week ending February 27, 1972, unemployment insurance benefits totalling approximately $5,000,000 were paid to WECO claimants and about $500,000 to AT&T claimants and charged against these plaintiffs' respective accounts in the Unemployment Insurance Fund.

f. TELCO's unemployment insurance normal tax rate increased from 0.9% in 1971, one of the lowest possible rates, to 2.3% in 1972, the highest tax rate possible in 1972, and to 2.8% in 1973. Had the aforementioned benefits to strikers not been paid, TELCO's unemployment insurance normal tax rate would have been about 0.8% (or no higher than 0.9%) in 1972 and about 0.5% in 1973. These increased tax rates have resulted in tax payments in 1972 and 1973, respectively, of approximately $6,150,000 and $9,300,000 in excess of taxes which would have been due and payable if benefits had not been paid to strikers during the 1971-1972 CWA strike.

g. Empire's unemployment insurance normal tax rate increased from 1.5% in 1971 to 2.3% in 1972, the highest tax rate possible in 1972, and to 2.7% in 1973. Had the aforementioned benefits to Empire strikers not been paid, Empire's unemployment insurance normal tax rate would have been about 2.1% in 1972 and 1.1% in 1973. These increased tax rates have resulted in tax payments in 1972 and 1973, respectively, of approximately $3,500 and $24,000 in excess of the taxes which would have been

due and payable if benefits had not been paid to strikers during the 1971-1972 CWA strike.

h. WECO's unemployment insurance normal tax rate increased from 0.7% in 1971, the lowest possible normal tax rate in that year, to 2.1% in 1972 (2.3% being the highest tax rate possible in 1972 for a positive account employer) and to 2.5% in 1973. Had benefits not been paid to WECO claimants between the week ending September 12, 1971, and the week ending February 27, 1972, its tax rate would have been about 0.7% in 1972 and about 0.3% in 1973. These increased tax rates have resulted in tax payments in 1972 and 1973, respectively, of approximately $880,000 and $1,150,000 in excess of the taxes which would have been due and payable if such benefits had not been paid.

i. AT&T's unemployment insurance normal tax rate increased from 0.8% in 1971, one of the lowest possible normal tax rates, to 1.0% in 1972 and to 0.9% in 1973. Had benefits not been paid to AT&T claimants between the week ending September 12, 1971, and the week ending February 27, 1972, AT&T's normal tax rate would have been about 0.9% in 1972 and about 0.7% in 1973. These increased tax rates have resulted in tax payments in 1972 and 1973, respectively, of approximately $60,000 and $127,500 in excess of taxes which would have been due and payable if such benefits had not been paid.

j. In addition to the excess taxes paid in 1972 and 1973, as described above in paragraphs "f" through "i", plaintiffs may continue to be subject to higher

unemployment insurance tax assessments in subsequent years than they would have been if the unemployment insurance benefits described in paragraphs "d" and "e" above, had not been paid to the employees.

36. Payments made pursuant to the Unemployment Insurance Law amounted to a maximum of $75.00 per week net to each benefited employee during the aforementioned CWA strike against plaintiffs.

37. TELCO's petition to the Public Service Commission ("PSC") for a rate increase in Case No. 26370 included TELCO's unemployment insurance tax (both normal and subsidiary taxes) as an increase in operating expenses. TELCO's brief to the PSC stated:

"C. *New York State Unemployment Taxes*

On 1/1/73 the tax rate increased from 2.9% to 3.7%. Since the 4/72-12/72 taxes were booked at the old rate, an adjustment was made to reflect the increase. The increase in other operating taxes is $2,141,000 ($1,593,000 intrastate) and the decrease in earnings available is $839,000 ($610,000 intrastate)."

[TELCO brief to PSC, July 6, 1973, Appendix A, p. 8, Item C.]

38. PSC Examiner Boschowitz' August 29, 1973, Recommended Decision (Appendix G, p. 3, Item I(3)(c) recognized, as an allowable operating expense, the increase in TELCO's unemployment insurance tax rate, stating:

"(c) New York unemployment taxes increased from 2.9% to 3.7% on 1-1-73, taxes booked at old rate, hence adjustment."

The aforementioned increase was similarly recognized by the PSC in its Opinion No. 73-79 (November 16, 1973, Appendix A, p. 1), which granted a rate increase. This recognition is reflected in the following table, relating to "Other Operating Taxes", which taxes include unemployment insurance and several other taxes.

	Examiner As Adjusted	Commission Adjustments	As Adjusted
Other Operating Taxes	$326,445	$9,802(8)	$336,247

39. From the year 1941 to June 1973, there has been one strike by employees against TELCO which lasted seven weeks and one strike against TELCO which lasted more than seven weeks.

40. Approximately 50,000 CWA-represented employees of Southern Bell Telephone struck for 72 days in 1955.

41. During the strike referred to in "40", above, CWA gave financial assistance to some of its members who participated in said strike.

42. In 1956, approximately 800 employees participated in a strike by CWA against the Ohio Consolidated Telephone Company commencing on or about July 15, 1956, and ending on or about February 27, 1957.

43. Approximately 7,700 CWA-represented employees of the General Telephone Co. of California commenced a strike on or about October 19, 1963.

44. Approximately 5,900 employees were participating in the strike referred to in "43", above, in February, 1964. Said strike ended on or about March 7, 1964.

45. Before and during the strike referred to in "43", above, CWA had a fund, one of the purposes of which was to provide financial assistance to striking CWA members ("strike fund").

46. On or about October 19, 1963, CWA had approximately $10,000,000 in its strike fund.

47. During the strike referred to in "43", above, approximately $7,000,000 in financial assistance was provided to some CWA strikers from the fund referred to in "45", above.

48. Some CWA members participating in the strike referred to in "43", above, received CWA assistance in paying utility, mortgage, and certain other current expenses.

49. Approximately 11,870 employees in the Plant Department of the Illinois Bell Telephone Co. ("Illinois Bell"), which employees were represented by the International Brotherhood of Electrical Workers ("IBEW"), commenced a strike on or about April 18, 1968, which strike ended on or about September 21, 1968.

50. Approximately 1,657 IBEW-represented employees in the Accounting Department of Illinois Bell did not work during the strike referred to in "49", above, from on or about April 18, 1968, until on or about May 5, 1968.

51. During the strike referred to in "49", above, IBEW gave financial assistance to some of its members who participated in said strike.

52. In order to be eligible for financial assistance during the strike referred to in "49", above, members were required to participate in picketing when asked to do so.

53. Approximately 10,020 CWA-represented employees in the Traffic Department of Illinois Bell commenced a strike on or about April 18, 1968, which strike ended on or about May 5, 1968.

54. During the strike referred to in "53", above, CWA gave financial assistance to some of its members who participated in said strike.

55. Approximately 142 employees in the Commercial Department of Illinois Bell, which employees were represented by the Commercial Telephone Workers Union, did not work during the strike referred to in "53", above, from on or about April 18, 1968, until on or about May 5, 1968.

56. Approximately 35 employees of Illinois Bell, which employees were represented by the Telephone Commercial Employees' Union, did not work during

the strike referred to in "53", above, from on or about April 18, 1968, until on or about May 5, 1968.

57. Approximately 20,000 employees in the Plant Department of the New England Bell Telephone Co. struck for approximately 13 weeks during 1968.

58. During the strike referred to in "57", above, some employees participating in said strike received public welfare benefits.

59. Approximately 2,450 CWA-represented employees of the General Telephone Co. of Ohio commenced a strike on or about July 16, 1973, which strike ended on or about October 4, 1973.

60. During the strike referred to in "59", above, CWA gave financial assistance to some of its members who participated in said strike.

61. During the strike referred to in "59", above, some employees participating in said strike received Food Stamps.

62. Approximately 2,000 CWA-represented employees of the General Telephone Co. of Indiana commenced a strike on or about July 23, 1973, which strike ended on or about September 30, 1973.

63. During the strike referred to in "62", above, CWA gave financial assistance to some of its members who participated in said strike.

64. Approximately 1,000 CWA-represented employees of the General Telephone Co. of Kentucky com-

menced a strike on or about July 23, 1973, which strike ended on or about December 28, 1973.

65. During the strike referred to in "64", above, CWA gave financial assistance to some of its members who participated in said strike.

66. Approximately 400 employees of the General Telephone Co. of Southeast (Alabama) commenced a strike on or about August 12, 1974, which strike ended on or about December 29, 1974.

67. During the strike referred to in "66", above, some employees participating in said strike received union financial assistance.

68. During the strike referred to in "66", above, some employees participating in said strike received Food Stamps.

• • • • •

Exhibits

[Plaintiffs' Exhibit 3; Transcript of 1971 Recorded Telephone Message; New York City]

This is Ricky Carnivale, president of Local 1101, CWA. Thursday, August 26th. 5 p.m.

I have just returned from the presidents' meeting. We have won the second battle. There is full International recognition of our strike against New York Tel as of today.

Our bargaining committee stayed in session to outline our demands. Additional assistance by research people to back up our bargaining committee's demands has already been established by the International.

President Beirne and the CWA executive board have favored the majority vote of the New York plant presidents and the men and women they represent. The pressure is this strike, and the picket lines are 90 per cent of that pressure.

To the few people who have seen fit to return to work . . . Get out of those damn buildings and support your brothers and sisters who have fought your battles and sacrificed to get more.

The bargaining will resume as soon as the outline is established. The place and time will be established by notification to each bargaining unit.

Remember that food stamps, welfare, unemployment is not, I repeat, not based on the legalities of a strike, but on the need and lost time wages of people.

We are having difficulties in various departments because of the interpretation by different commissioners and erroneous news reports. Our Community Service Committee has brought the entire problem to Sid Lou, who is the

Plaintiffs' Exhibit 13

representative of the New York State Labor Council. These problems will be resolved shortly.

All members are eligible for unemployment starting September 1st.

Keep calling this tape till you get through.

Thanks for calling.

[Plaintiffs' Exhibit 13; Transcript of 1971 Recorded Telephone Message; New York City]

This is Ricky Carnivale, president of Local 1101, CWA, Monday, September 27th. 6:30 p.m.

Bargaining was recessed today at approximately 3:30 this afternoon. The union bargaining committee chairman, Don Sanchez, was sick and asked to be excused. Although his International alternate, Jack O'Brien, was there company chairman, Ray Williams, claimed that they could not negotiate without Sanchez effectively. Negotiations were rescheduled for 10:00 a.m. tomorrow, September 28th.

Contrary to all the rumors and opinions floating around this local, our Community Service Committee reports that food assistance will still be paid to those members not yet receiving unemployment, or other sources of income. The committee recommends that any problems you have in regards to food assistance, come to the local with your unemployment records and have them straightened out.

Also, legal evictions, foreclosures and termination of service notifications such as gas, electric, oil etc. are being paid by the defense fund.

Your diligence on these picket lines has brought our scab list way down. Members who scab will be prosecuted to the

Plaintiffs' Exhibit 20

fullest extent of our bylaws and constitution. As president of this local, this I promise you.

The Community Service Committee also reflects a slight backlog of food assistance checks. Tremendous volume alone has caused this and they request that you be patient.

The volume of calls to this local and these tapes are also tremendous. Keep calling until you get through. Again bargaining is rescheduled for tomorrow at 10:00 a.m.

Keep in touch with this tape. Thank you for calling.

[PLAINTIFFS' EXHIBIT 20; Transcript of 1971 Recorded Telephone Message; Staten Island]

CWA, Local 1102, 467 Seaside Boulevard. This is Artie Schulh speaking. Thursday, July 22nd. 1 p.m.

The continued arrogance of the New York Telephone Company management in their refusal to reenter negotiations with our bargaining committee will prolong our strike action and inconvenience the public. There has been never a major contract negotiated in New York that did not include improvements in fringe benefits.

This type of archaic thinking forces us to continue to remain off the job until a suitable offer is made. To return to work now and then possibly go out again would only tend to prolong our eligibility for benefits, such as unemployment insurance, food stamps, etc.

Be sure to continue your picket assignments. Picketing is everyones responsibility. If you have any doubts of what your assignment is, call the local office on 447-4201.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 24; Transcript of 1971 Recorded Telephone Message; Staten Island]

CWA, Local 1102. This is Jim Curran. Tuesday, December 7th.

Bargaining will resume Wednesday, December 8th. The union is considering the company's request for federal mediation at future negotiations.

According to the Staten Island Advance on Friday, December 3rd, our councilman Frank Deondelulo introduced a resolution which asks the State Legislature to repeal the law enabling strikers to obtain unemployment insurance. This ex-dentist now finds he has all the qualifications for public office is certainly alienating labor and will find this out when he tries for re-election.

Don't forget the Christmas party on Sunday, December 19th, 1:00 p.m., at Labetti Post. All members and their families are invited free. Santa Claus will be there with presents for all the children.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 26; Transcript of 1971 Recorded Telephone Message; Westchester County]

Sunday, September 12th. This is Leilani Moyers.

Bargaining will resume on Monday. At Saturday's morning and afternoon sessions the union's demands on town reclassifications, union shop and clerical improvements were discussed.

Plaintiffs' Exhibit 34

We remind you that members are eligible for emergency food assistance under the CWA defense fund until such time as they receive unemployment checks. Call 472-1103 for an appointment.

Members of Local 1198, Western Electric sales, are also eligible. They should call Local 1198 president, Tim Scarry, on 472-6070.

This is CWA, Local 1103, Scarsdale, New York.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 34; Transcript of 1971 Recorded Telephone Message; Westchester County]

December 29th. This is Dan Keenan.

We have been on strike 169 days. It could just be possible that it has dragged out this long because the company still doesn't have the sense enough to realize that we're serious about the things we want, need and demand.

There have been management inspired rumors originating in Upstate New York that as of certain dates in January certain striking employees will be replaced. These rumors are totally erroneous. No part of this state has been affected and no part of the state will be affected. This typically underhanded company tactic will fail just as their other gutter style strikebreaking tactics have failed.

But we are putting this membership on notice—this strike must be won on the picket lines. We expect to see every single member of Local 1103 walking those picket lines. And their presence or the lack of it, will be verified by executive board members, chief stewards and picket captains.

Plaintiffs' Exhibit 36

Absolutely no benefits, including defense fund assistance, will be granted to any member who does not fulfill his or her picket obligations. I emphasize—there will be no benefits granted to those members who do not walk a picket line assigned.

The picket line is where this strike will be won. Get out there and let New York State management and AT&T know where you stand. This strike is being won. It will be over the day you hit that picket line.

This is CWA, 1103, AFL-CIO, Scarsdale, New York.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 36; Transcript of 1973 Recorded Telephone Message; Westchester County]

Sunday, April 1st. 1 p.m. This is Bob Brannigan, craft rep installation and repair.

I would like to thank the members who took the time and trouble to vote in the convention delegate election this past week. I would also like to thank the election committee and the volunteers who helped chairman Pat Braggio with this arduous task of counting ballots.

In last night's Gannet chain newspaper, they editorialized again, about aid to strikers and referred to a survey recently taken by New York State Senator Bernard Gordon. The response in his area, the 36th Peekskill area, was that 76 per cent responded against aid to strikers. They also mentioned that there are many union people in the Peekskill area who are against aid to strikers. I would like to see our members write to Senator Gordon and give their views

Plaintiffs' Exhibit 38

about aid to strikers. If we didn't get aid during the big strike of '71 and '72, I don't know where we would be right now. They keep harping on the point that it is unfair for an employer to subsidize a strike against themselves. But what about an employer who wants to prolong a strike and gain public animosity against the strikers? If anyone is interested in writing to Senator Gordon, call this office for his address.

Remember our mention of the Smith-Walker Bill in Albany last year which was a bill to deny aid to strikers? Well that is back again, only this time the sponsors are New York State Senator Present, Assemblyman Calogero from the Utica area, and our own Assemblyman Richard Ross from the Mount Vernon area.

This is CWA, Local 1103, AFL-CIO, 791 Central Avenue, Scarsdale, New York.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 38; Transcript of 1971 Recorded Telephone Message; Nassau County]

CWA, Local 1104. This is Jim O'Connor speaking.

There was a meeting held with president Beirne and the 23 plant presidents on Monday, August 23rd. There were numerous suggestions put forth both by president Beirne and the local presidents. And after six hours of discussion and taking our suggestions, under advisement, president Beirne adjourned the meeting. We will meet again with the presidents on Thursday and give us his decision as to

Plaintiffs' Exhibit 41

the course we will follow. In the meantime the strike will continue.

Our members are entitled to unemployment insurance. We have contacted the local employment insurance office and beginning Monday, August 30th, they will accept applications.

Those members whose Social Security numbers end with 0000 to 2499 need apply Monday; from 2500 to 4999, apply Tuesday; from 5000 to 7499, apply Wednesday; from 7500 to 9999, apply Thursday.

Please look up the address for the closest office in the telephone book.

Thanks for calling.

[PLAINTIFFS' EXHIBIT 41; Transcript of 1971 Recorded Telephone Message; Nassau County]

This is CWA, Local 1104, West Hempstead, New York. Friday, September 17th. This is Pat Meyers.

Bargaining is continuing today between the union and the company. Yesterday's session pertained to discussions about overtime for all Saturdays and some company demands. The union bargaining team is not issuing daily reports. They will only notify us when they have something concrete to report.

There will be a meeting Monday, September 20th at 10:00 a.m. for all the chief stewards and shop stewards at the Plumbers Hall, Willis Avenue, Mineola. It is important that the stewards attend so that they can get the information to pass on to the members.

Plaintiffs' Exhibit 46

In as much as you will not be receiving a full unemployment check next week, the union will continue to give out food assistance. You will receive the difference between your unemployment check and your normal food assistance.

An example: If you receive $30 in food assistance and you get a check for $18.75 from the unemployment, you will receive $11.25 from the union. Anyone not eligible for unemployment insurance will continue to receive their normal food assistance.

The local will also be able to give out some mortgage and rent help starting next week. Anyone who is in need of this help, please contact the local office by telephone first.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 46; Transcript of 1971 Recorded Telephone Message; Queens County]

Wednesday, September 1st. 6:00 p.m.

At a membership meeting held this morning at Antun's Restaurant, president John Renck gave a detailed report on the status of the strike in bargaining.

There has been no counteroffer from the company on any of our demands as of this time.

Over 1,000 members gave a standing vote of confidence to John Renck and his position not to return to work without a contract.

A formal request is being made to the CWA, that the International Union pay for the Blue Cross and Blue Shield premiums during the strike period.

Plaintiffs' Exhibit 56

All members are entitled to unemployment benefits as of today and should file at the office nearest your home.

Our strike is as strong, if not stronger, than it's ever been.

This is Ed Creegan for Local 1106, CWA, Queens, New York.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 56; Transcript of 1971 Recorded Telephone Message; Rockland County]

CWA, Local 1107
Sunday, August 15th. CWA, Local 1107.

On behalf of the officers and executive board of the local and all the local officers of New York State, I want to congratulate the members for rejecting the company offer. The vote was 11,405 reject; 9,734 accept. Your bargaining committee will be going back into bargaining Monday, August 16th. I can assure you that we, the committee, will be extending ourselves to the fullest to come away from the table with a contract acceptable to everyone and we will stay out on strike until this is attained.

Through your actions over the last four weeks and the results of your vote, you have demonstrated to the company despite their propaganda and underhanded methods, that you are not second-rate citizens and will not be treated as such. That you are equal at least to a painter whose hourly rate in three years will be $7.45 compared to $5.90 for you.

Your bargaining committee needs your support now more than we've ever needed it before. Just continue the

Plaintiffs' Exhibit 65

good fight. Remember, in another week and a half you will be entitled to unemployment benefits and there are certain benefits you are entitled to now. If anyone has any questions regarding this please call the union office.

And you clerical people . . . If you haven't heard, a grocery clerk for A&P in three years will be making $190.00 per week.

Thank you again. Keep up the fight and keep in touch with your stewards.

There will be a steward's meeting Monday, August 16th at 7:00 p.m.

Charlie Black.

[PLAINTIFFS' EXHIBIT 65; Transcript of 1971 Recorded Telephone Message; Suffolk County]

CWA, Local 1108, Bay Shore, New York. Saturday, September 25th. 2:00 p.m. Norman Henschel speaking.

Negotiations have been recessed until Monday, September 27th. The company is still insisting that the original July 18th offer be resubmitted to the membership. They must be nuts. They keep b . . . s . . . ing about the effect of the Nixon wage freeze on bargaining instead of all the b.s. all they have to do is to loosen up the purse strings, bargain on the non-money items and let us worry about the Nixon wage freeze and the Cost of Living Council. Just give us something that we can present, not a lot of b.s.

It is the advice of this local and the International that members do not pay telephone company bills for BME and EME. Claims should be processed as usual. Claims not honored due to the strike will be paid by the defense fund.

Plaintiffs' Exhibit 69

Next week most members should receive a full check from New York State Unemployment. Food assistance will be only paid to those members who show an unemployment check in a lesser amount than their normal food assistance entitlement. Absolute proof will be required for an assistance.

Next week, each day the Community Service's Committee will meet at the local offices, 1265 Sunrise Highway in Bay Shore. The office space is limited. Please make a telephone appointment before applying for any assistance. Most problems regarding utility and mortgage payments can be resolved by a telephone call rather than office visit. The office number is 665-2680.

Our case against James Kirby, Commissioner of Social Services was presented before Judge Orin G. Judd on Friday, September 24th. As usual with most political appointees in Suffolk County, Mr. Kirby was not prepared. The hearing will continue Tuesday, September 28th with a possible decision by Thursday, September 30th.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 69; Transcript of 1971 Recorded Telephone Message; Suffolk County]

CWA, Local 1108, Bay Shore, New York. Monday, October 25th. Norman Henschel speaking.

Intensified bargaining sessions continue today in New York City. The company has agreed to make every effort to reach an agreement by November 1st. Any change in the bargaining will be reported on this tape.

Plaintiffs' Exhibit 69

The union bargaining committee is working very diligently in order to reach an equitable agreement by the November 1st deadline. Bargaining with the Bell System is a very tough, tedious and thankless job. It is very hard to bargain with a monopoly that doesn't give a damn for its employees.

The company attitude has now changed because of the outside business pressures. Their unemployment rates have skyrocketed and the strike now effects other related industries. For example, it has been reported that the Western Electric Company in New Jersey has temporarily laid off some 500 people due to being overstocked. The business community has turned against the company due to the many troubles and the tremendous backlog of customer orders which now number well over 800,000.

The company must realize the importance of a decent contract. Neither the company nor the employee can afford a strike every three years. The only way to circumvent such a situation is to reach an agreement that is equitable to both parties. A good contract is the only assurance of future labor peace and labor peace is the only solution to improve service which the public rightfully deserves.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 71; Transcript of 1971 Recorded Telephone Message; Geneva]

Friday, September 3, 1971. CWA, Local 1114, Geneva, New York.

Negotiations took place on Tuesday and Wednesday of this week. The company broke off on Thursday and today the meeting resumed.

To all of you stalwarts who saw your duty and are doing it in the face of all the pressures, a ray of light has shown through. All members and nonmembers who have had the fortitude to stand their ground and who can hold their head high are now eligible for unemployment insurance. All in the bargaining unit can now sign up at your earliest possible convenience.

For sure, in case anyone has any doubts, the strike is still on and in full force. It is a full-fledged strike, legal in all respects and with the full backing of the International. Good to see there are still some with guts enough to stand for what is right even in the face of all the ugly rumors and the unethical tactics of the employer. There will be a day of reckoning and we can all go back to work knowing we did a good job.

Thank you for calling. Keep calling for up-to-date news.

[PLAINTIFFS' EXHIBIT 79; Transcript of 1971 Recorded Telephone Message; Kingston]

CWA, Local 1120 news with offices at 580 Broadway, Kingston, New York. Wednesday, August 25, 1971.

The most current information we have at this time is that all 23 local presidents will be meeting with president Beirne tomorrow in New York City. This meeting was called by president Beirne himself last Tuesday when we met with him. Whereas, at that time, he took some of the local president's suggestions under advisement and will report back to us. It is absolutely necessary that the membership of this local stand firm in their present position, maintain picket lines and trust in the elective leadership of this local. I strongly suggest, any and all information, kindly rely on the leadership of this local to give you this information. We all know the press media has occasions to distort the facts. We will do our best to keep you as informed as we possibly can.

On the bargaining scene, negotiations have been recessed at the present pending the meeting with president Beirne tomorrow.

It is true, three locals in this state have chosen to return to work at the direction of their local leadership without the full knowledge of the rest of the state presidents. These three locals are Elmira, Auburn and Binghamton. I am sure we all know who they are. They have been in and out so many times that I am very sure the membership themselves in those locals are confused.

On the local scene, I have been in touch with the people from the New York State Unemployment Service and have

Plaintiffs' Exhibit 80

been reassured that as of September 2nd we will be eligible for unemployment benefits. I have instructed all the area representatives to contact in their respective areas, those people in charge of the unemployment offices to establish an orderly way of applying for unemployment benefits. We are looking forward to a smooth operation in regards to our members applying for these benefits.

On the food stamp problem in Ulster County . . . No decision has been rendered as yet from our hearing. We are very hopeful that a decision will be rendered by the end of this week.

For further information continue calling the tape of this local.

I thank you for calling. President Robert Smith speaking.

[PLAINTIFFS' EXHIBIT 80; Transcript of 1971 Recorded Telephone Message; Poughkeepsie]

August 25th. CWA, Local 1120, Poughkeepsie, New York.

Yes, there is an area in Upstate, New York that has returned to work by order of their local president—Local 1118 of Binghamton, along with Geneva, Newark, Corning and Ithaca areas.

This membership, 1120, must realize that there is a very small membership and one completely surrounded by General Telephone Company, which is of a different union. This membership should also realize that in past incidents that they were in and out so many times that they themselves and their president, when he was at presidents' meeting did not know where they stood at one given moment.

Plaintiffs' Exhibit 82

Also, I feel they made a very foolish mistake in returning to work prior to the upcoming 49th day which makes us eligible for New York State unemployment insurance which you have paid into most of your working life. You are on the threshold of receiving New York State unemployment that no New York Telephone employee has ever received before.

Along with the federal food stamp subsidy, which I realize that some areas are having difficulties, I feel that we're over the hump. We're just waiting now for tomorrow's results of meetings with the local presidents' of New York State and Joseph Beirne of the International. Whatever results happen, I will relinquish to this membership as soon as possible.

This is your area rep George Herman.

Keep smiling.

[Plaintiffs' Exhibit 82; Transcript of 1971 Recorded Telephone Message; Poughkeepsie]

Communication Workers of America, AFL-CIO, Local 1120, Poughkeepsie, New York. September 1st.

The bargaining committee met today and yesterday. Yesterday they talked on substantial wage increase, elimination of "N" days, clerical and chauffeur upgrades. On vacations: If you worked five years you should get three weeks. If you worked ten years you should get four weeks. A better and improved hospitalization plan, which will probably include your dental and paid prescription.

Plaintiffs' Exhibit 86

The bargaining committee feels that today they should be able to complete the rest of the demands and their proposals.

A steward's meeting is pending. Stewards will be called by phone as to where and when and time. In regard to members who do not show up for picket duty there are possibilities of being brought up on charges by the trial's committee.

We also suggest that you check with your unemployment office for unemployment insurance and your food stamp program. For those of you that need information in reregard to those, we suggest that you call Ken Hornbeck, the chairman of the committee services.

This is your area rep George Herman.

Thank you for calling.

[Plaintiffs' Exhibit 86; Transcript of 1971 Recorded Telephone Message; Syracuse]

Tuesday, June 29th.

Attention all members CWA, Local 1123 . . . On Monday, June 28, officers of the CWA locals in Onondaga County met with the county welfare department and discussed aid for strikers. It was a very favorable and informative meeting. Complete details will come later.

Also w. met with the unemployment insurance. One thing for sure . . . 49 day waiting period before collecting the unemployment insurance but it will be there.

Plaintiffs' Exhibit 93

More strike information will come in the Local 1123 news bulletin.

Thank you for calling. This is CWA, Local 1123, Syracuse, New York, 700 East Water Street, Midtown Plaza.

[Plaintiffs' Exhibit 87; Transcript of July 30, 1971, Recorded Telephone Message; Syracuse]

Local 1123, CWA, Syracuse, New York.

We have received definite word that we will receive unemployment benefits after 49 days on strike. President Poole is now negotiating for food stamps and welfare.

Keep calling this tape for further information.

Thanks for calling.

[Plaintiffs' Exhibit 93; Transcript of 1971 Recorded Telephone Message; Watertown]

Local 1124, Watertown, New York. Wednesday, September 1st. 5:15 p.m.

Negotiations are taking place and the demands are being placed on the bargaining table. Today the rest of the demands are being placed on the table. Discussions took place yesterday on the elimination of the "N" day and the upgrade of clerical and chauffeur. The committee expects the company's offer in the next few days. The money and the big city allowance were discussed today. When we receive additional information we will place it on the tape.

Plaintiffs' Exhibit 93

Members are being called to apply for unemployment insurance. All members should have applied by Friday, September 3rd. More are to be called tomorrow. If you have not been called by Thursday, September 2nd, call this office because many of our members are unable to be reached by phone. The last day worked was July 13th. This information is needed for your unemployment form. Also, take your Social Security card.

Members should sign up for food stamps for October by September 10th. After you sign up for your unemployment come up to the office and additional information on the BME and the life insurance will be given to you in the form of a handbill.

The picket schedule for Thursday, September 2nd at 170 Stone Street, from 7:00 to 10:00 is Glen Lehigh and Don Smith; from 10:00 to 1:00 is Bill Carr and John Mullen; and from 1:00 to 4:00 is Rudy Thourdeau and Bob Rose.

The officer on duty will be Warren Leffeur. The office will be manned from 9:00 to 12:00 by Sue Miller and from 1:00 to 4:00 by April O'Shea.

Keep calling the tape for further information.

This is CWA, Local 1124, AFL-CIO, Watertown, New York.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 97; Transcript of 1971 Recorded Telephone Message; Schenectady]

CWA, Local 1125. Tuesday, August 24th.

Yesterday a meeting was held in New York. In attendance were the 23 local presidents and Joe Beirne. We had a five hour meeting to discuss the complex situation of the New York plant in light of Tricky-Dick Nixon's wage freeze. We will be meeting again with President Beirne on Tuesday morning, August 26th.

To file your unemployment insurance the following method will be used for your convenience. You may come to the union office and make out a form before August 30th between the hours of 7 a.m. to 2 p.m., Monday through Friday. We would prefer that you make out the form at the union office to expedite matters.

Your reporting day will be based upon the last four numbers of your Social Security number:

001 through 1099:	Monday, August 30th
2000 through 3099:	Tuesday, August 31st
4000 through 5099:	Wednesday, September 1st
6000 through 7099:	Thursday, September 2nd
8000 through 9099:	Friday, September 3rd

The time that you are to report is determined by the last number of your Social Security number.

0 will be 8:30 to 9:00 a.m.
1 will be 9:00 to 9:30 a.m.
2 will be 9:30 a.m. to 10:00 a.m.
3 will be 10:00 a.m. to 10:30 a.m.
4 will be 10:30 a.m. to 11:00 a.m.

Plaintiffs' Exhibit 104

5 will be 11:00 a.m. to 11:30 a.m.
6 will be 1:00 p.m. to 1:30 p.m.
7 will be 1:30 p.m. to 2:00 p.m.
8 will be 2:00 p.m. to 2:30 p.m.
9 will be 2:30 p.m. to 3:00 p.m.

Claims may be filed beginning August 30th or before at the local office.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 104; Transcript of 1971 Recorded Telephone Message; Glens Falls]

Monday morning. September 13, 1971. Glens Falls, New York. This is Hart Rhodes, Local 1127 president speaking.

After sessions held Saturday negotiations were recessed and are scheduled to resume this morning. President Beirne has called a conference of New York plant bargaining committee members and local presidents for 2 p.m., Wednesday, September 15 in New York City. I will be attending that conference and will report to you via this tape no later than Thursday, September 16th.

A local executive board meeting will follow the meeting with president Beirne, followed by a general membership meeting to be held no later than the middle of next week. More details on these meetings will be placed on this tape following Wednesday's presidents' conference with president Beirne.

Warren and Washington County members should reapply for food stamps on or before September 17th. Town of

Plaintiffs' Exhibit 112

Monroe members may apply at the Town Hall in South Glens Falls on September 16th.

All members are reminded to report at the specified time and date at the New York State Unemployment Insurance office on the day of this week assigned to you. You must do this to get your unemployment insurance check.

If you wish to apply for CWA defense fund assistance please do so any time Thursday, September 16, between 9 a.m., and 9 p.m. at the local union office, 71 Main Street, South Glens Falls.

Thanks for calling.

[PLAINTIFFS' EXHIBIT 112; Transcript of 1971 Recorded Telephone Message; Potsdam]

This is Communication Workers of America, Local 1128. October 25th. 12:00 p.m.

A number of dirty birds flew into this local Friday night —dirty rotten scab birds. But then we are all aware of this now. Action will be taken to counter this.

The business community, which heretofore has supported the telephone company, is now beginning to crack.

The drain on unemployment compensation fund has been so great, the fund is threatened with total collapse. Under the law when such a condition exists, the entire business community is required to replenish the fund. They will be hit in their pocketbook--where it hurts.

Thank you and good night.

[PLAINTIFFS' EXHIBIT 114; Transcript of 1971 Recorded Telephone Message]

Thursday, July 15, 1971
Time: 10 PM

Joe McNiff, President CWA Local 1150

We are doing quite a bit of work trying to clarify the food stamp program. In Manhattan, they claim they don't want us to file before the 27th. In Bergen County, they claim not to file later than the 26th. In Mercer County in Jersey, they say not to file other than on the 20th. In Long Island, they claim file immediately. We are drawing up all these instructions trying to get our people on board—we have the introductory letters as members of this local ready to mail out to those who need them. In the meantime, I want to compliment the members of this local for their showing up and picketing not only at "32" but at 811, White Plains, Long Island and every other area in Jersey that we are using them.

In White Plains yesterday, we had a man hit by a car of a scab. Today in Mt. Kisco, another man was hit by a car driven by a scab. In Newark it looks like the Police Department which was held guilty for the riots in 1967 by a commission which was chaired by a representative of the New Jersey Bell, seems to forget, and is taking out whatever burn they have on the pickets. I understand three women who were on a picket line were ruffed up today by the police. There was a charge of police brutality pressed against them. Bargaining did continue today. This evening I was called by a member of the bargaining unit who tells me that all presidents of the Long Lines Unit will be

brought together to meet at starting noon on Sunday. What this is all about I'll be able to tell you more about it on Monday. In the meantime, maintain those picket lines; accept your responsibility to walk once in about every eleven days.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 122; Transcript of 1971 Recorded Telephone Message]

Wednesday, September 29, Local 1190, 260 West Broadway, New York City. This is John Flanagan.

The CWA Bargaining Committee has charged the Company with hiding behind the freeze to avoid responsible collective bargaining. The Telephone Company can make any wage proposal they choose to, subject to approval by the President's Council. If any portion of the agreement is not approved by the Government, it could be given to the members when the controls have terminated. So far the Company has refused to bargain not only on money but on non-monetary items not covered by the freeze. In Michigan and Ohio, the members have voted not to accept temporary management assignments to replace supervisors being sent to New York City. Complaints have been filed in 9 States and the District of Columbia, with the Public Utilities Commission. Each of these States has sent supervisors into New York. The Federal Judge has granted a temporary restraining order against the Suffolk County Commissioner of Welfare, requiring him to process applications from our members. George Meany has assigned a member

of his staff to handle all complaints about food stamps in his County. As a result, the Department of Agriculture investigators have visited trouble spots and cleared up most problems. The Company has admitted to a backlog of over 300,000 Installations and predicts monumental problems when the strike is terminated. The strike is more than 91% solid in New York Plant. Bargaining sessions are scheduled for today.

New recordings will be made as information is received. Thank you for calling.

[PLAINTIFFS' EXHIBIT 128; Transcript of 1971 Recorded Telephone Message; Albany]

Local 1191—Friday, July 2

As we near the strike date, bargaining is continuing in an effort to avert a strike. If the Company will not come across with a good substantial offer before July 14, they will force us off our job and out into the street. We in Western Electric have been working on a day-to-day basis since May 1, that's two months that we have been on the old contract and that is more than ample time for the Company to know our needs but they have offered us very very little in order to support our families. Will they come up with something in the next few days remaining?

Plaintiffs' Exhibit 142

Only in the future will we know if the Bell System will force us out of work. We have prepared ourselves with picket assignments and in fact have come up with a new shorter schedule to benefit everyone. The new assignments will be given out at the July 13 Union Meeting and while you are there, if you have not received your Health Service card, pick it up then—it will benefit you and your dependents. Also, 49 days after July 14 you will be entitled to receive unemployment. Food stamp information and other services available to you during the impending strike will be available through your Local Office. We have had time to prepare so you should be ready if the need arises.

This is Lee Hatfield, your Albany Area Representative, wishing you and your loved ones a safe and happy Fourth of July holiday. Thank you for calling.

[PLAINTIFFS' EXHIBIT 142; Transcript of 1971 Recorded Telephone Message; Buffalo]

Tri-Local Council, CWA, 706 Beach Road, Buffalo, New York. Friday, October 22nd. 5:00 p.m.

As of this time no word has been received from the bargaining committee lifting the news blackout. If word is received the tape will be changed tomorrow morning.

Plaintiffs' Exhibit 143

There is a chief steward's meeting, Monday, October 25th, 2:00 p.m. at the Marigold Manor on Maryvale Drive.

Due to a misunderstanding at the unemployment report location, anyone who was not on vacation, I repeat, not on vacation the week of October 11th and still has a "P" marked on their unemployment calendar for the holiday, Monday, October 11th, it was in error. These members should call the union office and give us your name and social security number so we can straighten out this error with the unemployment department.

And also, remember October 25th will also have to have an "N" marked on the calendar for next week.

Thanks for calling.

[PLAINTIFFS' EXHIBIT 143]

COMMUNICATIONS WORKERS OF AMERICA
AFL-CIO
85 Worth Street
New York, New York 10013

April 8, 1971

To Presidents of Bell System CWA Locals

Fraternal Greetings:

President Beirne has designated Western Electric Installation and C & P of D. C. as the pattern setters in this years' contract negotiations.

Those of you who attended the Denver Convention and workshops, heard President Beirne describe the serious problems that confront us. The situation has not changed since Denver.

Plaintiffs' Exhibit 143

On April 9th, a meeting of all Defense Fund Agents will be held in Washington. I have appointed my Assistant, Gene Mays, as the District #1 Defense Fund Agent. The primary purpose of the meeting will be to program Defense Fund Training sessions for all Bell Locals.

Upon Gene's return, we will be announcing the details of the program. However, at this time we can advise you that the classes will be held in each area of District One. Each Local Union will be asked to designate an officer and the Community Services Chairman to attend. These two officers will then be responsible to train the Local Committee responsible for administration of the Defense Fund.

Thus, it would be helpful if each Local President determines now who will attend the classes and also activate the CSC if it is now in a dormant stage.

Local Unions in District One that are now in bargaining and in the first cluster are Western Electric Installation, New Jersey Traffic, New England Directory Clerical and Western Electric Manufacturing in Buffalo. These Local Unions should begin to establish strike committees responsible for, among other things, assignment of picket duty times and locations for each and every member. The staff will be available to assist any Local requesting assistance. Now is the time to make the preparations.

We'll advise you of any significant developments.

Sincerely and fraternally,

/s/ M. Bahr
Morton Bahr
Vice President

MB/pb
cc: G. Cramer
District One Staff

[Plaintiffs' Exhibit 144]

COMMUNICATIONS WORKERS OF AMERICA
AFL-CIO
District One
85 Worth Street
New York, New York 10013

June 21, 1971

File: 1.33

TO: Local Presidents, Locals 1101, 1102, 1103, 1104, 1106, 1107, 1108, 1150, 1190, 1195, 1196, 1198

FROM: E. J. Mays, Assistant to Vice President

SUBJECT: Defense Fund School

Now that a strike date has been set for all Bell System Units, we are scheduling a Defense Fund School to be held at the District Office, 85 Worth Street, N. Y., N. Y. on July 7, 1971 beginning at 10:00 A.M.

We request that the financial officer and the chairman of the Local's Community Services Committee attend this school.

The Union's Constitution now mandates that each CWA Local must have an established and functioning Community Services Committee. Locals who do not have established and functioning C.S.C. Committees, we urge you to establish such Committee *AT ONCE*, as *NO* "Defense Fund Monies" will be advanced to any Local until it has been certified that the Local has an established and functioning Community Services Committee.

Plaintiffs' Exhibit 146

DATE: July 7, 1971

PLACE: District Office, 4th Floor

TIME: 10:00 A.M.

E. J. Mays

EJM: slm

cc: Staff Servicing Downstate
Bell Locals

[PLAINTIFFS' EXHIBIT 146]

COMMUNICATIONS WORKERS OF AMERICA
1925 K Street, Northwest
Washington, D. C. 20006

To: CWA Local Presidents — July 14, 1971

SUBJECT: 1971 Bell System Strike— First Advance — File: 1.33 x 1.30

Fellow Officers:

Now that we are on strike, I felt that I should advise you that the initial Defense Fund advances have been sent to the Defense Fund Agents in each District and your Local will, in the very near future, receive the first advance.

I know that the main objective at this point is the maintenance of picket lines and the morale of the members. As this first money goes out, I wanted to remind you and

Plaintiffs' Exhibit 146

through you, the Community Services Committees, that we all have a real job ahead of us in trying to stretch this money as far as it will possibly go.

Obviously, the need at this point is not near as great or as critical as it will become later, which gives further emphasis to the use of frugality and dollar stretching.

I know that I speak for the members of the CWA Executive Board and the CWA Staff who serve as Defense Fund Agents and Field Representatives, in saying to you that our entire Defense organization stands ready to assist you in whatever way we can. We are all in this struggle together and will emerge not only triumphant but with greater appreciation for such things as brotherhood and solidarity.

Sincerely and fraternally,

/s/ GLENN E. WATTS
Glenn E. Watts
Defense Fund Director

NS—2863

[Plaintiffs' Exhibit 147]

Communications Workers of America, AFL-CIO
85 Worth Street
New York, New York 10013

September 7, 1971

TO: All New York Tel Locals and Locals 1150, 1151 1152, 1190, 1191, 1195, 1196, 1197 & 1198

FROM: E. J. Mays, Defense Fund Agent

SUBJECT: New Guidelines for Food Assistance New York Telephone Strike — File: 1.33 x1.30

For the weeks of September 6th and September 13th, those who qualify on absolute need will receive $2.00 per family member per day—not to exceed 5 days per week and $30.00 per family unit per week.

No food assistance is to be given after September 7, 1971, since the members will have other income—which will average $75.00 per week from the New York State Unemployment Compensation.

E.J.M.

EJM/pb

[Plaintiffs' Exhibit 148]

Morton Bahr, Vice President
District 1

Communications Workers of America
85 Worth Street
New York, N. Y. 10013
Telephone: 431-5937

September 7, 1971

TO THE MEMBERS OF THE
NEW YORK PLANT UNIT

Fellow Members:

In President Beirne's August 30th letter to you, he indicated that we will, from time to time, report to you on the status of negotiations, the problems that confront us and what is being done to resolve these problems. This is the first such report.

• • • • •

[4] I want to also report to you on some other matters of the utmost importance.

Social Service Assistance (Welfare)—Some of our members are experiencing difficulties in receiving welfare assistance simply because they are strikers. The New York State Social Service Department has ruled that strikers are eligible to receive welfare benefits as long as they meet the

other qualifications. However, certain counties are defying the State. In Onondaga County (Syracuse) a Judge has issued a preliminary injunction permitting payments to a [5] striker's family but not to the striker himself. This matter will shortly go to trial. The International Union has intervened in the case and has instructed our attorneys to do whatever is necessary to protect our members.

Suffolk County Social Services Commissioner Kirby has taken the position that neither strikers or their families can receive public assistance. The International Union has instructed our attorneys to take legal action against Commissioner Kirby and any other public official that takes similar action against our members and their families.

Out-of-town Supervisors. On August 31, President Beirne instructed the Union's attorney's to take legal action against New York Telephone for the importation of out-of-town supervisors into New York City. The International Union's lawyers obtained a summons in Manhattan Criminal Court charging New York Telephone with violating the Administrative Code of the City of New York. The Company immediately transferred the supervisors to Long Island, Westchester and Upstate and sent New York Tel supervisors from these areas into the City. The International Union will charge this Company action constitutes a circumvention of the Law and is illegal. The Company must appear in Criminal Court on Sept. 13.

Picketing. Fewer than one-third of the Telephone Company properties are being picketed. *This is not in the best interest of the membership.* The Local Presidents urged a rejection of the July 18th contract. A majority of voting

members rejected and a legal strike is now under way. *Every Local officer* and *every Local member,* unless specifically excused, has an obligation to walk the picket lines. So long as we cannot shut down the Company's operation the maintenance of picket lines around the clock is necessary for an effective strike. Picket lines will keep some of the weaker members from becoming strikebreakers. Picket lines will keep members of other Unions, such as delivery men and some construction trades, from going to work. Most important, manning of picket lines will demonstrate to the management that you intend to support your rejection of the proposed contract and the fight to obtain a more favorable one. I am, therefore, instructing each Local Union to immediately establish around the clock picket lines and to make performance of picket duty, unless excused for good and proper reason, a condition of receiving Defense Fund assistance.

• • • • •

Sincerely and fraternally,

/s/ Morton Bahr
Morton Bahr
Vice President

MB/pb

[Plaintiffs' Exhibit 149]

Morton Bahr, Vice President
District 1

Communications Workers of America
85 Worth Street
New York, N. Y. 10013
Telephone: 431-5937

September 27, 1971

NEW YORK PLANT STRIKE BULLETIN #3

This report covers the period of negotiations between 9/17 and 9/24/71.

• • • • •

[2] While the Bargaining Committee works hard to get a contract, there has been much activity on other fronts.

• • • • •

On September 20, Federal Judge Orin Judd granted the International Union a temporary restraining order against the Suffolk County Commissioner of Welfare requiring him to process applications from our members. On September 24, Commissioner Kirby appeared in court totally unprepared. Judge Judd gave him until September 28 to submit his position in writing. A decision is expected shortly thereafter.

At the request of Secretary Treasurer Glenn Watts, AFL-CIO President Meany assigned a member of his staff, Ray Andress, to handle all complaints about inability to

get Food Stamps in some counties. As a result, U.S. De-
[3] partment of Agriculture investigators have visited several trouble spots in New York and appeared to have now worked out the problems. Anyone having trouble should notify the Union.

As of September 24, affected Local Unions have been advanced $1,441,000 for member assistance.

Telephone Company management is attempting to convey that they can ride the strike out indefinitely. They have, however, admitted to a backlog of some 300,000 installations and predict monumental service problems when the strike terminates. Management has enjoyed the support of the business community. Industry, in general, is not putting the heat on Telco—with some exceptions that telegraph the true situation.

Arcata Communications, Inc., on September 24, asked the U. S. District Court in New York City for temporary and permanent injunctions against N. Y. Tel for refusing to provide requested service. Arcata told the Court: "It is a well-known fact that the demands for telephone service in New York City have exceeded the expectations of N.Y. Tel and its immediate capacity to render such service. A prolonged strike by N.Y. Tel employees has further reduced its ability to furnish prompt and efficient telephone service."

The pressures are on. Management will do everything possible to break your spirit. It won't work. Morale is high. The strike is more than 91% solid. It will be your

solidarity that will lead to a successful conclusion of the strike.

Sincerely and fraternally,

/s/ MORTON BAHR
Morton Bahr
Vice President

MB/pb

[PLAINTIFFS' EXHIBIT 150]

Communications Workers of America, AFL-CIO
85 Worth Street
New York, New York 10013

October 14, 1971

NEW YORK STRIKE BULLETIN #5

• • • • •

[2] Striking members who live in Suffolk County received a big boost when U.S. District Court Judge Orin Judd ruled that a person could not be denied welfare assistance because he is a striker. He ordered the County to immediately process applications retroactively. A copy of Justice Judd's order has been sent to the State Supreme Court in Syracuse where a similar case is being heard.

• • • • •

Telephone management is trying to play it "cool"; to give the impression things are normal. However, their actions betray their put on front. Mr. Ellinghaus' personal

plea to the members to put the heat on their officers is one of the give-aways. In addition, Western Electric has filed a complaint with the New York State Department of Labor asking for a denial of unemployment benefits to those Installers and Sales members respecting picket lines. The State is conducting hearings but is continuing to pay benefits. Also, the Western Electric Company has filed a complaint with the NLRB designed to force the Installers back to work. Are these the actions of a Company that is not hurting?

• • • • •

Negotiations should move at a more rapid pace. It will be difficult to report developments as they occur. Every member should bear in mind that *every* action the management takes is to discourage you and weaken the strike. *On the 92nd day of the strike, 91% of the employees are* holding fast. This is a record that you can all be proud of. President Beirne extends his congratulations and appreciation for this true demonstration of trade Union spirit in the fact of battling an automated giant. Just remember, there are serious pressures building on the giant. More than 400,000 people are waiting for telephones. Construction programs have ground to a halt.

Defense Fund assistance to Local Unions has now reached the $1,750,000 mark. Significantly, this is more than New York Plant members have paid into the Defense Fund since they joined CWA.

Plaintiffs' Exhibit 151

The total Union is behind our efforts here in New York. Continue to keep the faith. Support your Committee in every way possible.

Sincerely and fraternally,

/s/ Morton Bahr
Morton Bahr
Vice President

MB/pb

P.S. We have just learned that N.Y. Tel is contesting the right of strikers to collect unemployment benefits. *The State will continue to pay all strikers.* This is further evidence of management's state of panic.

[Plaintiffs' Exhibit 151]

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO
85 Worth Street
New York, New York 10013

October 22, 1971

NEW YORK PLANT STRIKE BULLETIN #6

We can report that as a result of the action taken by the Local Presidents at the October 13 meeting, when President Beirne's recommendation was unanimously agreed to, the bargaining tempo has been stepped up considerably.

The Bargaining Committee met with President Beirne and me in Washington on October 15. The Committee had

Plaintiffs' Exhibit 151

done its homework and was able to tell us just what, in their judgment, it would take to get a contract. The meeting was most fruitful.

Over the October 16th weekend, the Company agreed to our proposal to make every effort to reach a full agreement by November 1—or earlier. On October 18, the two committees agreed to a temporary news blackout concerning all aspects of bargaining.

Our Bargaining Committee has been turned loose. They are free to use their judgment to drive for the best agreement possible within the next week. President Beirne is using all of his influence with top government, Industry and public leaders in Washington and New York in support of the Committee's goals. I have had meetings and discussions with high officials in our State.

The Business Community which heretofore has supported the Telephone Company is now beginning to crack. The drain on the Unemployment Compensation Fund has been so great that the Fund is threatened with total collapse. Under the Law, when such a condition exists, the *entire* Business Community is required to replenish the Fund. They will be hit in their pocket-books where it hurts.

The Company is also coming under fire from the New York State and New York City Tax Commissions. I have advised Governor Rockefeller and Mayor Lindsay that the Company has violated the tax laws by not withholding State and City income tax from the paychecks of out-of-town supervisors.

As a result of my complaint to Governor Rockefeller and agreement reached with the Building Trades by our Albany

Plaintiffs' Exhibit 151

Local, some 200 supervisors from Massachusetts were prohibited from working on the South Mall, the Albany complex that will house the State Legislature.

Management's "business is normal" got shot down the other day. Western Electric announced hundreds of layoffs from manufacturing plants. The reason? Oversupply due to lack of demand for equipment and parts from New York Tel. The truth is apparent to all. Substantial pressures are on both sides. The Union wants a settlement. We believe the climate is right for a just and equitable agreement *now*.

You, the member, remain the key. Your solidarity is being recognized by the entire labor movement. With your continued support your Bargaining Committee will be able to recommend a contract to the Local Presidents and they in turn will be able to recommend it to you. Your Committee deeply appreciates your expression of support.

Sincerely and fraternally,

/s/ Morton Bahr
Morton Bahr
Vice President

MB/pb

[Plaintiffs' Exhibit 152]

Communications Workers of America, AFL-CIO
85 Worth Street
New York, New York 10013

November 10, 1971

To All Local Presidents, District One

Fraternal Greetings:

The strike against the New York Telephone Company enters the 18th week today. The stamina and spirit of our members in New York Tel and those respecting picket lines in Western Electric and Long Lines, is simply amazing. More than 89% of the New York Plant employees are still on the bricks.

New York State Unemployment Compensation is a tremendous assist to our members. In addition, the CWA Defense Fund is taking care of the necessary payments for shelter and installment payments for cars and appliances where repossession is threatened.

Our Defense Fund, as you know, is being administered in strick accordance with the Rules adopted by the delegates to our Convention. These Rules do not have the kind of flexibility that will enable us to do something "special" for the Thanksgiving holiday. That something special is a substantial Thanksgiving dinner for the striker and his family.

I am, therefore, appealing through you to every single member for a one shot donation of $5.00. Of course, Local treasury donations would be most welcomed additions.

Checks should be made payable to "E. J. Mays—District One" and sent to this office. The receipts will be prorated among all the Local Unions. Since this is earmarked for Thanksgiving, quick action is required.

Plaintiffs' Exhibit 153

Our members have the opportunity of demonstrating the spirit of Thanksgiving to their brothers and sisters in need.

Sincerely and fraternally,

/s/ M. Bahr
Morton Bahr
Vice President

MB/pb
cc: District One Staff

[Plaintiffs' Exhibit 153]

Communications Workers of America, AFL-CIO
85 Worth Street
New York, New York 10013

November 11, 1971

NEW YORK PLANT STRIKE BULLETIN #9

Negotiations took a new twist away from the bargaining table. Last night (Wednesday), Mayor Del Bello of Yonkers met with our Bargaining Committee at his request. The Mayor expressed his deep concern as to the effect our strike has had in each community in the State as well as to the long term effect it will have on telephone service. He expressed his displeasure in the public image that was developed (by the Company) that everything was operating normally. The Mayor said the public should know that service will be in a deteriorating condition for as long as two years after the strike.

Plaintiffs' Exhibit 153

Mayor Del Bello requested the Union and Company to meet in his office on Friday, November 12. The Union has accepted. Mr. Del Bello said he is considering requesting every Mayor in every city and hamlet in the State to become involved in an effort to settle the dispute.

At the Bargaining table, however, there was no movement. The management non-bargaining team continued to non-bargain. When confronted with the *fact* that supervisors on Staten Island are receiving the Big City Allowance and it was not offered to our members, management, not having a logical answer could only mutter "we don't have to discuss management wages with you." Talks are continuing on a daily basis.

President Beirne held a meeting with the Committee and Local Presidents on November 9. Mr. Beirne gave details on the preliminary actions taken by the Pay Board. He said it appeared at this time that the Pay Board's action did not stop New York Tel from increasing the July 18 offer as proposed by the Union. He said he believed the circumstances surrounding these particular negotiations would enable us to get the contract approved.

Mr. Beirne reported that there were substantial pressures on the Company to settle the strike. Unlike the financial pressures on our members and their families, the pressures on the Company could not be seen—but they were there.

To add to the pressures, CWA yesterday joined the City of New York and others in an effort to block the proposed $49 million rate increase for New York Tel. We filed our petition with the Public Service Commission.

Plaintiffs' Exhibit 153

CWA lawyers filed a petition in Buffalo Federal Court for a temporary injunction to prohibit New York Telephone from tapping the lines in the Union office. The Court was also requested to enjoin the Company and Burns Detective Agency from following members and officers of the Union.

In addition, CWA filed a complaint today with the Office of Emergency Preparedness charging New York Tel with violating the Price Freeze. Since New York Tel was ordered to have out-of-town supervisors pay State and City income tax, management decided to pay these taxes themselves rather than have the out-of-town scabs pay as we do. This constitutes a substantial wage increase and violates the Freeze. How would you like to have the Company pay your taxes?

We have been receiving letters from members indicating severe financial hardship. We have a Defense Fund. You, like other CWA members, have contributed into it. It is there to assist you in your time of need. While there are specific rules for administering the Fund, it does provide for payment of all necessary bills. The Fund's Rules essentially eliminate the need for a member to be scarred as a scab the rest of his life because he couldn't provide shelter for his family or was having his car and furniture repossessed. Members who are confronted with serious financial problems should discuss them with members of their own Local Union Community Services or Defense Fund Committee.

President Beirne once again declared that the N.Y. Plant membership has earned the admiration of the total Union and the entire Labor Movement in the stamina and vitality

Plaintiffs' Exhibit 156

they have shown in the long struggle to win an acceptable settlement.

Sincerely and fraternally,

/s/ Morton Bahr
Morton Bahr
Vice President

MB/pb

[Plaintiffs' Exhibit 156]

Joseph A. Beirne, *President*

Communications Workers of America
(Affiliated with AFL-CIO)
1925 K Street, N.W.
Washington, D.C. 20006
Telephone: FEderal 7-7711

December 14, 1971

To: Members in New York

Dear Colleagues:

From the very bottom of my heart I wish I could be reporting to you the Bell System Management has seen the righteousness of our demands and that we have reached agreement. However, no such glad tidings can be given at this time.

In recent weeks we have stepped up the tempo of our negotiations and have involved a number of Federal and State Officials in them. At all levels, which include our bargaining committee in New York, our District Headquarters and the International Headquarters, we have had activities connected with bargaining going on day and night. The

Plaintiffs' Exhibit 156

New York Company and the Bell System still remain adamant and no change has been brought about in their position.

The increased tempo of our activities is designed to bring about a resolution of the struggle at this Holiday Season.

Our Members in the New York Plant, and those of other units who are respecting picket lines for these many months, have earned the undying respect of everyone in CWA and, I am certain, of the American Labor Movement. Your quiet strength and fortitude is an inspiration to all who have ever struggled to attain a better way of life. Whatever the outcome of the struggle one undeniable fact will aways remain—you did what you knew was right and had the courage to support your convictions in an undeniably impressive manner.

The International Executive Board reviewed your situation on December 14th and without a single dissenting vote authorized our Defense Fund Director to spend over a million dollars to give each of you who are on strike or respecting picket lines a Christmas check with which to buy your loved ones a Christmas gift. Just contact your Local to receive it.

We are working tirelessly and with our best efforts to resolve this dispute and have the highest praise for your steadfastness during the last five months.

With a prayer for you and your family, I remain

Sincerely and fraternally,

/s/ J. A. Beirne
Joseph A. Beirne
President

[Plaintiffs' Exhibit 158]

Morton Bahr, Vice President
District 1

Communications Workers of America
85 Worth Street
New York, N.Y. 10013
Telephone: 431-5937

February 4, 1972

To All Members, New York Plant & Empire City Subway Bargaining Unit

Fraternal Greetings:

This report is being written on the 205th day of the most valiant struggle any group of Union members has ever waged in the history of the trade Union movement. This has been a battle that many said was doomed to failure; that you just couldn't "beat the System"; that throughout the history of labor relations in the Bell System, not a single strike ever resulted in any improved monetary or non-monetary offer. Others were quick to point out that IBEW's 18 week strike against Illinois Plant in 1968 (with CWA Traffic members honoring their lines) at a time the Democratic National Convention was held in Chicago resulted in a settlement that did not include any new money and was essentially the same as the one rejected.

There were three significant victories scored. First, the fact that more than 80% of the rank and file membership stuck together in the face of extreme Company pressure and other hardships is a victory of the highest order in the labor movement.

Second, the System moved on two national demands, Union Security and payment for Saturday work. And, finally, additional money was put into the package. The

amount of additional wage benefits is anything but impressive. However, it broke the System's long standing policy of even giving one cent after its final offer. In addition to the IBEW's ill-fated 1968 strike, as far back as 1919 when IBEW struck the System, rather than give one additional cent, the Company permitted the U. S. Government to take over the business. So, while the amount of money was small, the accomplishment and impact on the future is significant.

New York Telephone and AT&T repeatedly said they will *never* change the July 18 offer—and for more than six months they continued to say *never*. They said *never* in relation to new money and they said *never—never* in relation to matters of principle.

"Never" has been removed from AT&T vocabulary. Although there are a number of significant improvements we did not get all we deserve and are entitled to. But, we [2] broke new ground. We led the way for telephone workers across this nation. We will be looking forward to further improvement in 1974 in those former "principle" areas.

The credit for what has been accomplished goes to you, the member, whose perserverance and dedication was visible for all to see. This membership attitude, coupled with the support of the officers and financial resources of the Union (about $15 million in Defense Fund money) convinced the Bell System to reach an accord.

• • • • • •

[4] President Beirne has asked me to say to you "while the changes are not as significant as may be desired or

proper, I sincerely recommend our members vote 'YES' ". I concur with President Beirne's recommendation.

Whatever your choice may be, however, the staff in District One and the national officers of this Union will fully support your decision.

Sincerely and fraternally,

/s/ Morton Bahr
Morton Bahr
Vice President

MB/pb
Enc.

[Plaintiffs' Exhibit 159]

Morton Bahr, Vice President
District 1

Communications Workers of America
85 Worth Street
New York, N.Y. 10013
Telephone: 431-5937

March 7, 1972

To All CWA Members, New York Plant

Fraternal Greetings:

Since the termination of the strike and up to the present date, I have been negotiating with the management in accordance with the amnesty terms of the strike settlement.

It was immediately clear that when the Company did not win the right to discipline "for strike misconduct in the Company's judgment" hundreds of our members' jobs were saved. There still remained a list of several hundred who

were charged with a variety of alleged criminal acts. All were subject to loss of their jobs.

Through intensive negotiations, we have been successful in restricting the number of discharges to 13. At least one of these members has been indicted by a Grand Jury.

Everyone of these members will have his discharge arbitrated. They are also being provided the best legal services available to defend them against the criminal charges. Also, the Defense Fund will assist these members to support their families until their cases are finally adjudicated.

I want each member to know that a splinter group in Local 1101 known as "Strike Back" severely hurt our efforts to save jobs. Strike Back posted thousands of stickers around the City alleging that "300 would be discharged;" that this was part of the "Beirne sellout." They made it just a bit more difficult for us to get the number down as low as we did. Hopefully, the number will be even further reduced through arbitration. I believe the result, thus far, has demonstrated the effectiveness of the Amnesty Clause.

Immediately after the ratification vote, the Company Vice President of Personnel and I signed a joint petition to the Pay Board requesting approval of the entire contract. We made a formal presentation to the Pay Board on Washington's Birthday. President Beirne's office is in daily contact with the Pay Board, but there is no way to predict exactly when the decision will be forthcoming.

Now that we are back to work several weeks, it is a good time for some reflection.

The fact that more than 80% of the membership stayed together for 218 days is simply incredible. In my judgment, it is a testimonial to three phenomena:

1. Dedication and spirit of the strikers
2. Unemployment insurance
3. Effectiveness of CWA's Defense Fund

The dedication and spirit shown needs no elaboration. It was evident throughout.

The $75.00 Unemployment Insurance gave us some equity with an automated industry whose income continues during a strike and who enjoys the benefits of a legal monopoly. New York Tel and the U. S. Chamber of Commerce are *today* leading the fight in Albany for the repeal of Unemployment Insurance for strikers. They are using our strike as a weapon against all workers. It is urgent that every member write immediately to his State Assemblyman and Senator urging him to vote against the Smith-Walkley Bill to repeal this benefit.

Each of you could best relate the effectiveness of our Defense Fund. It enabled people to remain on strike without losing their homes, being evicted, having cars and furniture repossessed, etc. We had about $13,000,000 in the Fund when the strike began. In order to continue to support the strikers, the International Union had to borrow an additional $2,000,000. For example we gave Local 1101 alone $4,897,425.00.

The effectiveness of our Fund can be seen when measured against IBEW and the Teamsters. Each of these Unions gives a striking member $25.00 a week and you then worry about paying your bills yourself.

It is interesting to note that CWA's Defense Fund paid out more in benefits to New York Tel strikers than New York Tel members have paid in total dues (per-capita and local dues) to CWA since they joined in 1961.

All this is in the past, however. We have fought hard together and hopefully profited by our experiences. This is the time to look ahead and plan for 1974.

In this regard it is important for every member to be aware of the infiltration of many radical groups into the rank and file of Local 1101. These groups were visible throughout the strike. They include: "Workers Vanguard", "Committee for Rank & File Caucuses", "United Action", "Strike Back" and the "Socialist Labor Party".

Each of these groups advocated violence and destruction of property. They operate where dissension exists and where threats of violence cause people to allow them to move in.

For example, on February 10, a group of 40-50 members of Local 1101 purported to be members of Strike Back, raided the District One office. Their stated aim was to rough me up. Why? Because I had the audacity to believe that after seven months on strike, you earned the right to a vote.

I was out of town at an Executive Board meeting. My Assistant, Gene Mays, prevented the police from evicting these men. He wanted to give them an opportunity to express their views. In addition to a flow of the worst obscene language in the presence of our secretaries these brave men cut all the lamp cords, telephone wires, cut the hose in the sink, pasted stickers on the walls and caused other damage.

Then just as the Ku Klux Klan operated, these heroes came back in the dark of night and painted obscene slogans on the outside walls.

During the succeeding week, we got bomb threats and I was warned we would never count the ballots. The night

the count was announced, a car sped by our office and a can went through our front door. Cars with four men in each blocked both ends of Worth Street in a way to be able to get anyone leaving our building. These cowards ran when the police appeared.

It is a matter of record that members of the Communist Party and Socialist Workers Party infiltrated our strike activities in Manhattan and Brooklyn. These non-members and non-telephone workers had one job—create incidents between strikers and police and divide the Local from the International.

Here are a few quotes from the January 1972 issue of "Strike Back" that reports on the near riot that followed the demonstration at Governor Rockefeller's office.

> "Our official target will be the large central office on E. 56th Street. But the word is quietly passed through the ranks that after E. 56th St., we will attack the scab foremen working in manholes on 2nd Avenue".
>
> "Brooklyn strikers have organized themselves into militant raiding parties. Two or three times a week, Brooklyn brothers have harassed foremen, smashed and turned over trucks. . . . ."
>
> "We charged the tool cart and turned it over. The tires are ice picked. Everything breakable is broken."
>
> "We saw a brand new Telco Maverick and splicing truck parked on 55th St. Before the cops could recover, we charged the two vehicles, smashing the windows and steel bodies of both, the Maverick was turned over three times by different parts of the demonstration.

Plaintiffs' Exhibit 159

The ladders off the top of the splicing truck disappeared into the middle of our ranks for later use, as cops swarmed around the battered car and truck to prevent more damage."

Strike Back went on to print more and more of the violence that followed the peaceful demonstration at Rockefeller's office sponsored by the Union.

It is obvious that these outside forces—not a single name is signed to any of the publications—planned to instigate and involve many of our members in these acts of violence.

There are allegations that some of the literature distributed during the strike was printed in the Daily World Building, the official paper of the Communist Party.

The labor movement has been faced with an attempt by such groups to infiltrate their ranks before. Our experience shows that their activities cannof stand the light of public exposure and the will of the rank and file and leadership to stand up to the threats of intimidation and harassment.

With the awareness and determination of every member and officer, we shall beat this threat to undermine our Union and the American Labor movement. These men do not belong in any Union—and as President Beirne said: "It is doubtful that they should belong to the human race."

Finally, we must mature to the point where we recognize that we have the best darn Union around, but that it is made up of human beings and thus subject to the errors of people. Changes can and must be made through the internal democratic processes.

Some members, in expressing their frustrations, say "We'll go Teamsters", as if that Union is a cure all for all

Plaintiffs' Exhibit 161

problems. The Teamsters have been rejected time and time again by Bell workers. And, only a few months ago, the 4,000 employees of the Puerto Rican Telephone Company (subsidiary of ITT) voted out the Teamsters in an NLRB election. CWA has been asked to move in.

We have the best Union. We have the machinery to make it even better. Working together, we can succeed.

Sincerely and fraternally,

/s/ Morton Bahr
Morton Bahr
Vice President

MB/pb

[Plaintiffs' Exhibit 161]

COLLECTIVE BARGAINING MEETING
CONTRACT NEGOTIATIONS
WITH
COMMUNICATIONS WORKERS OF AMERICA
DRAKE HOTEL

[September 9, 1971]

• • • • •

[5] Sanchez: I just got some disturbing news. We understand that the New York Telephone Company is taking action with the Unemployment board to postpone payments to our striking

[6] workers. I just want you to know that Joe Beirne said that if you people dare postpone these payments you'll have the Union at your throats for the next 10 years.

• • • • •

[PLAINTIFFS' EXHIBIT 164; CWA Executive Board Report, 1972 Annual Convention, pages 77-79]

STRIKE AND DEFENSE FUND

Since its beginning in 1952, the CWA Defense Fund has assisted thousands of CWA members, who have been forced to take strike action. Such assistance has been based on the principle of need, which has been the guideline since the inception of the Fund. CWA has historically done everything that is possible to avoid strikes and work stoppages but regardless of the skill of the negotiators and the patience of the members strike action has been necessary as a last resort. The past year has been one of the most active in the Fund's history.

Two strikes of long duration were terminated in the past year. They included members of Local 6474 employed by King Radio Corporation at Olathe, Kansas who has been on strike for five years. A final ruling by the courts and the National Labor Relations Board brought the termination of this long struggle.

The strike which began in September 1970 against the Hamilton Beach Division of Scovill Manufacturing Co. ended with the ordering of a consent election. With a nationwide strike being imminent last July, literally hundreds of schools were conducted by Agents and Field Representatives of the Defense Fund to train Community Services Committees in each Local on the administration of the Fund and on strike assistance. This training did not go in vain. CWA members took to picket lines on the morning of July 14 throughout the Nation. Interestingly, in preparation for this strike,

Millions of dollars in CWA's Defense Fund contributed significantly to effectiveness of long New York Plant strike—and scenes like these in Local 1101 were repeated statewide as interviewing, processing and check-writing played their part in the drama.

CWA made the largest order for picket signs in the history of the American Labor Movement. There were 80,000 weatherproof signs shipped throughout the Nation. Intensive, round the clock bargaining brought a successful conclusion to this strike within a week, during which the Agents, Field Representatives and hundreds of Local committees carried out duties which they had been trained for. CWA members employed by the New York Telephone Company continued their strike action resulting in one of the longest strikes by a large unit in the history of the Union. Seven months were to

pass before a new contract was ratified by the members of this bargaining unit. The Committees administering the Defense Fund in the New York Locals undertook the gigantic task of handling the needs of approximately 40,000 affected members. All public assistance that could be gotten was made available to those involved in the strike, including unemployment compensation and food stamps. In counties that resisted giving assistance to our members, legal action and pressure from the Nation's Capital eventually caused the reactionary county officials to assist our members on those commodities to which they were entitled as taxpayers.

The entire effort was coordinated from the office of Defense Fund Agent Eugene Mays who was in close contact with Defense Director Glenn Watts and Deputy Director J. W. Webb. Toward the latter part of the strike, literally hundreds of members stood in lines awaiting assistance from the Committees administering the Fund. The Defense Fund was nearing the point of exhaustion when the end of the strike came. Currently, an accounting of the Defense Fund money that was spent is under way. Other strikes of large magnitude during the past year included the Western Union employees who are members of Local 1177 in New York. Strike aproval was given to Local 6572 for members employed by the Western Arkansas Gas Company effective April 24, 1972.

CWA Defense operations were given excellent assistance by the Community Services Department of the AFL-CIO during the past year. Another matter which involved the defense of CWA during the past year was dual unionism trials involving four members in Local 2101. Defense Fund Agents who administered the strikes in the ten Districts were:

District	1	Eugene Mays
	2	Jane Palmer
	3	Allen Willis
	4	Albert Verhaeghe
	5	Glen Hanson
	6	Javus S. Weeks
	7	Duane Haywood
	8	Fay Marsh
	9	J. M. Van Houten
	10	T. J. Volk

[Plaintiffs' Exhibit 165]

NEW YORK GENERATOR
Official Publication of Local 1101—Communications Workers of America, AFL-CIO; Bronx-Manhattan Plant Department Workers

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Telephone: 681-9022-3

December 1973—Vol. XI, No. 18

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[8] Editorial . . .

One of our strike's effects on "ma bell" has recently come to light.

In an attempt to undermine any future strike effort, New York Telephone has filed a suit in Manhattan Federal Court to prevent strikers from collecting unemployment benefits.

But the real humdinger came when the mighty multi-million dollar empire asked the courts to wipe out a $48.6 million debt to the state unemployment fund which came about as a result of our members collecting unemployment during the strike.

New York Tel. would do well to pay the fund what it owes and commence preparations for our next contract, and incidentally, better wages and benefits, instead of looking for ways to sabotage our strike weapon even before we utilize it. CWA has been around for 35 years and will be around for many more, "mother," and your silly games won't change that.

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[Plaintiffs' Exhibit 172]

Transcript of "TODAY" Show
NBC News Broadcast of February 4, 1970

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[Anchorman Frank Blair]

A three month nationwide strike against the General Electric Company, one of the country's biggest industries, appeared near an end this morning. The two biggest striking unions announced their members had ratified a new contract. Ten smaller unions involved were expected to follow their lead. The walkout had idled 130,000 workers in 135 communities. Strikers at Schenectady, New York, site of G.E.'s biggest plant voted against ratification but union leaders said voting elsewhere, as they put it, makes it impossible to lose. The voting scenes in Cleveland were typical.

[Reporter Douglas Drake—NBC Cleveland]

International Union of Electric Workers has 2700 members in Cleveland. Last night they jammed into their union hall to hear details of the settlement which provides up to 80 cents an hour raise over 40 months. Their enthusiasm to end the strike wasn't dampened by the rejection of the offer by the biggest IUE local, Schenectady, New York.

[Speaker at Podium]

All I know is that Schenectady voted today 5 to 3 to stay out and you know the reason why.

[Unintelligible voices from floor]

Plaintiffs' Exhibit 172

[Speaker at Podium]

Because they're getting $65 a week in unemployment compensation.

[Unintelligible voices from floor]

[Speaker at Podium]

All right I understand. Okay. All right. All right. Okay. That's all right. That's all right. That's all right. Now I'll explain the contract. I'll answer any questions on the contract, and we'll take a vote. I say the hell with Schenectady too. Okay. I mean. I'm able to answer any questions in the contract and I wanted to bring it to a vote when you're ready.

[Unintelligible voices from floor]

[Speaker at Podium]

Vote?

[Unintelligible voices from floor]

[Speaker at Podium]

Vote. Yeah. [Banging gavel.] All in favor. All in favor. All in favor of accepting this settlement signify by saying Aye and raise your hand.

[Many voices from floor yelling Aye]

[Reporter Douglas Drake—NBC Cleveland]

Douglas Drake, NBC News, Cleveland.

[Anchorman Frank Blair]

A General Electric spokesman said the settlements would add a billion dollars to G.E.'s costs over the next four years.

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[Plaintiffs' Exhibit 184; Proceedings of CWA's 1952 Annual Convention; pages 219, 220, 225]

All right, the Report of the Committee will be given by its Chairman, Mr. Brown.

DELEGATE W. W. BROWN (Chairman, Defense Fund Committee): Mr. President, Fellow CWA Members:

REPORT OF THE DEFENSE FUND COMMITTEE FOR PRESENTATION TO THE SIXTH ANNUAL C. W. A. CONVENTION

The Defense Fund Committee was created to fill the gap between the long felt need for a defense fund, and a concrete, practical plan for the collection and administration of such a fund in C. W. A.

Every step of the way, from Convention action to the formulation of a workable plan, was undertaken with the knowledge that the fate of our Union hung in the balance.

President Beirne, acting under a mandate from the Fifth Annual Convention of Communications Workers of America, appointed the committee and instructed it to carry out the will of the Convention as expressed in the following resolution:

"WHEREAS, The opinion of most of the delegates shows a strong desire for a national strike or defense fund; and

"WHEREAS, There having been several proposals before the Convention of one type or another on the subject, none of which will conform with the Local treasuries and

"WHEREAS, In order to build a fund for defense or strike there will, of necessity, be required extensive study of what can best be afforded by all the Locals.

"NOW, THEREFORE, BE IT RESOLVED, That the President appoint a committee, the name of which shall be the Defense Fund Committee, duties of which shall be to formulate a plan for the collection of a defense fund and the administration of same, and that the committee report to the 1952 Convention."

Meeting for the first time in Washington, D. C., during the week of October 1, 1951, and again during the week of January 14, 1952, the Committee spent several days in intensive discussion of every aspect of the job which it had to do.

The clear need for a defense fund was the basic fact on

which the discussion proceeded. It was recognized that, regardless of every other consideration, the Union could not hope to survive unhurt in time of stress without an adequate defense fund.

The experience of every union that has ever joined battle with its bargaining adversary in a show of economic strength proves that a war chest, under one name or another, is an absolute must.

The question of a name for the fund had been determined by mandate of the Convention.

At the very beginning, it was unanimously agreed that the purpose of the fund "shall be the defense and relief of the Union, its Locals, their members, officers and agents, when circumstances arising out of labor disputes make such defense and relief necessary."

The business before the Committee was to study and analyze [illegible] from the field, to weave these in with the historical background of Convention debate on the subject, and to come up with a plan which would have the best possible chance of [illegible] operation under strike and bargaining conditions in the communications industry.

We found that suggestions from the field fall into three broad and general categories:

1. That a defense fund be maintained and administered at the International Level of the Union, built by setting aside a portion of the present per capita dues to the Union.

2. That the matter of a defense fund was a purely Local function, and one on which the Convention should take no action.

3. That a defense fund be collected from monies outside the present per capita dues, and that such monies be allocated between the International Union and the various Locals.

It can be easily seen that such wide differences of opinion, expressed in so many different plans, forced the Committee to seek further guidance before making its recommendations.

It was here that we sat down to find out what debate had taken place on this subject in the past. The historical background [illegible] available in the minutes of previous conventions. In search [illegible] record, we found that at CWA's First Annual

The answer was obvious. We have seen enough "toothless wonder" to know better.

Therefore, realizing that the chief use of a defense fund is to strengthen the Union's position at the bargaining table, and, where necessary, to sustain effective strike action, the Committee was compelled to reach the conclusion that the defense fund should properly be under the control of the International Executive Board.

This was a crucial decision which was reached after long deliberation. The Committee had found the desire for a "bargaining level" fund as far back as 1947, when the First Annual Convention officially called for an emergency fund to be used solely for the purpose of financing strike action when taken by the Division. In 1947, the Division was the "bargaining level."

Despite individual preferences expressed since that time for a purely Local fund, one fact was undeniable:

The Defense Fund is a tool. It is one of the bargaining tools, similar to such a bargaining tool as statistics which are gathered by the Research Department, and it cannot do a job unless it is held in the proper hands.

Under the control of the same party which is responsible for collective bargaining, the defense fund is the primary means of implementing the bargaining program; operated in any other manner, it would not truly be a defense fund at all. It would be something else.

When it came to consideration of the actual conditions which shape our bargaining program, it again became clear that the defense fund should be under the control of the Executive Board. We asked ourselves certain questions. How is bargaining actually carried out? What overall method, procedure or strategy is followed? What tools are necessary for the job?

We face cold facts when we dig into this subject. The history of bargaining in the communications industry has been a history of writing not one, but many, separate contracts. And always, the first contract has been a pilot contract—or, more specifically, the guinea pig. As the guinea pig goes, so goes the industry. We know that from years of experience. For the sake of illustration, we cite the 1951 bargaining pattern which the Union followed, because that one is fresh in our minds. One section of the nation was wrapped up; a contract setting a general pattern was established, and bargaining then fanned out to the other parts of the nation and Canada.

This strategy not only takes advantage of the variable ex-

[PLAINTIFFS' EXHIBIT 185; CWA Defense Fund Rules and Local Defense Fund Ground Rules, 1970]

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[13] 2. Authorized Membership Assistance Expenditures

In order to protect our members from loss of shelter, utilities, home furnishings, cars, medical and insurance coverage, and the hardships occasioned by insufficient food and fuel, Defense Fund monies shall be available subject to the extreme limitations of the Fund and within the intent of the Fund principles. Before Defense Fund money is disbursed—assistance services of the community shall be exhausted—scrounging committees must be utilized to the fullest extent, members and Locals shall make every reasonable effort to arrange deferments or moratoriums on loans, deeds and notes from merchants, landlords and other creditors.

• • • • •

[36] 3. Counsellors should keep in the forefront of their minds that Defense Fund money cannot be spent unless and until all other means and methods for assistance have been exhausted and a real and actual case of hardship or "necessity" has been developed.

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[PLAINTIFFS' EXHIBIT 217]

WALL STREET JOURNAL
July 14, 1971

Strikers on Welfare
Workers on Public Aid During Walkouts Draw Increasing Criticism

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Critics Say Such Help Leads To Lengthening Disputes; States Complain of Costs

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'Strikers Are Taxpayers, Too'

By JAMES P. GANNON
Staff Reporter of THE WALL STREET JOURNAL

PITTSBURGH—One man who is really worried about the threat of a steel walkout Aug. 1 is Edward H. Kalberer. "I just hate to think of it," he says. "It makes me pray for a miracle of no strike."

Mr. Kalberer isn't a steelworker, a steel executive or a mill customer. He is the man in charge of public-welfare programs in Allegheny County, which encompasses this steel-making center. And he is worried that his understaffed, tightly budgeted county welfare agency may be overwhelmed by strikers applying for food stamps, public assistance and other benefits if the United Steelworkers of America calls a steel-industry walkout next month.

To prepare for the possible deluge, the agency is considering setting up temporary welfare offices near the

mills or setting up shop in the steelworkers' union halls. It estimates that at least 250 extra staffers would be needed to process aid claims from many of the approximately 59,000 steelworkers in the county. But, because of a budget bind, the agency has little hope of adding so much manpower. It has been sending representatives to USW local union meetings to explain eligibility rules and benefits of public-aid programs, hoping that the union officials may do some screening of members to ease the threatened paperwork jam.

The problems of the Allegheny County welfare agency are only one symptom of a major development that has important implications both for welfare programs and for labor bargaining generally.

Welfare: An Aid to Union Bargainers

Without attracting much attention until recently, American labor unions have developed an increasingly successful technique of using the nation's growing public-aid programs to reduce the economic pinch on striking members. Only now are big employers fully realizing, with alarm, that as a result they face a stronger foe at the bargaining table. Financially, strapped state governments are finding more of a different type of welfare client at their public-aid offices: the factory hand who is generally stereotyped as antiwelfare but who may be changing his attitudes as welfare eases the woes of the walkout.

A considerable controversy is brewing over this trend. Big employers hit hard by recent strikes, such as General Electric and General Motors, are stepping up public attacks on welfare for strikers. Congress and the courts have been considering its merits. The debate, both sides

agree, is likely to persist a long time. "This may be the new industrial-relations issue of the 1970s," one GE management man believes.

Although the big controversy is new, the actual practice isn't. For years striking workers have resorted to public-aid programs during long walkouts. But both management and labor officials agree that the liberalization of welfare-eligibility rules, the development of new programs such as food stamps, and especially the unions' growing sophistication in taking advantage of such aid have made welfare for strikers much more significant in labor-management struggles.

A few samples illustrate this increasingly important role.

The GE and GM Strikes

In the 101-day national walkout by a coalition of unions against GE in 1969-1970, strikers collected an estimated $30 million of publicly financed aid, ranging from food stamps to welfare checks to unemployment compensation, according to one AFL-CIO official. In Massachusetts, more than 5,000 of the 20,000 GE strikers went on welfare, collecting more than $2.3 million.

James Compton, assistant to the president of the International Union of Electrical Workers, says there is "no question" that public aid "played a very major role" in the strike against GE. He credits the AFL-CIO's community-services department with a "tremendous effort" to tap all available public benefits. The public benefits, in fact, dwarfed the unions' strike funds; the $30 million in public aid was 10 times larger than the special fund the AFL-CIO collected for the union coalition.

In last year's 10-week walkout at GM by the United Auto Workers Union, strikers collected $12 million to $14 million of federally financed food stamps in October and November, the U.S. Agriculture Department estimates. In Michigan, according to state statistics, 75,000 of the 200,000 GM strikers there were certified eligible for food stamps; 25,600 received welfare under either the program for aid to dependent children or general-assistance plans. The dependent-children payments totaled $4.3 million in the last three months of 1970.

The Westinghouse Strike

In a five-month strike by the United Electrical Workers Union against Westinghouse Electric Corp.'s big plant at Lester, Pa., the welfare caseload in surrounding Delaware County ballooned. When the walkout by 5,700 workers started last August, the county had 367 persons in one category of dependent-children relief for families headed by males; that more than doubled, to 779 persons, by January, when the strike was in its last month. The relief rolls dropped back sharply after the strike ended Jan. 25.

These and similar cases are the subject of the first comprehensive research study of the subject, currently being conducted by Herbert R. Northrup, director of the industrial-research unit at the Wharton School of Finance and Commerce at the University of Pennsylvania. Mr. Northrup, an authority on labor matters, believes that the use of public aid in strikes is "a major problem."

"We feel this is becoming a significant welfare cost and is having an impact on collective bargaining by making

strikes longer and settlements higher," Mr. Northrup says. "From a public-policy point of view, we haven't really thought through the question of whether we can live with a system where strikes don't hurt one party seriously. I don't want anybody to starve, but I know collective bargaining can't work unless a strike hurts both sides."

Major employers are becoming more vocal in opposing aid to strikers, particularly since some of the biggest companies have been hit by long, costly walkouts.

Such aid "tends to encourage and prolong strikes," charges George B. Morris Jr., director of labor relations for GM. In a recent speech in New York, Mr. Morris said: "Permitting the trend toward public assistance to strikers to continue is one of the surest ways I know to destroy collective bargaining. Strikes serve the function in collective bargaining of bringing pressure to bear on management and the union to reach a settlement. In order to do this, strikes must pinch both sides."

Virgil B. Day, a GE vice president, charges that public aid in walkouts means "that the government is subsidizing strikes." He adds, "This doesn't help the anti-inflation game plan, and it can't be offset by (governmental) exhortations to negotiate lower settlements."

The Union Viewpoint

Labor leaders don't deny that welfare benefits make surviving a strike easier. But they contend that as taxpayers, union members on strike are as entitled to public aid as other needy people and that life isn't easy for strikers, just because food stamps or welfare checks are available.

Criticism of aid to strikers is "part and parcel of a general attack on the welfare system and on labor unions generally," contends Leo Perlis, director of the AFL-CIO's department of community services. Mr. Perlis has master-minded labor's efforts to tap public programs. Of late, he has been cranking up his defenses. Late last year, during the GM strike, he sent a letter to affiliated unions giving labor leaders suggested ammunition to "answer these attacks."

Some samples: "Taxpayers' dollars are used to feed hungry people in other countries. . . . Tax dollars feed criminals in prison. . . . Tax dollars provide food, clothing, shelter and medical care for enemy prisoners of war. Are fellow Americans engaged in industrial warfare entitled to less?"

Mr. Perlis argues that the only criterion for aid should be need, whether caused by "an act of God, an act of nature, an act of management or an act of labor." Strikers shouldn't receive public-aid benefits if they don't meet the eligibility requirements, he says, but if they qualify, they shouldn't be discriminated against because they are on strike.

Even with public help, "everybody suffers in strikes," asserts James J. Matles, secretary-treasurer of the United Electrical Workers. "It's ridiculous to say they are on easy street" if strikers are receiving food stamps or welfare checks, he says. The idled worker "just piles up a tremendous debt that he has to pay back when he returns to work," he adds.

Community Service Representatives

Partially to aid strikers, the AFL-CIO has developed a nationwide network of 180 full-time "community service

representatives" in 140 areas. These union men are designated by the AFL-CIO but are on the payrolls of the local United Fund or Community Chest—organizations in which labor has considerable clout because of its large contributions. These 180 specialists perform a coordinating role in any strike by an AFL-CIO union, helping the local involved to inform strikers about public-aid programs. They also perform many other jobs that aren't related to strikes, such as helping recruit union members for United Fund drives.

The AFL-CIO has geared up its strike-assistance mechanism to swing into action in case there is a walkout today by the Communications Workers of America against American Telephone & Telegraph.

Individual unions also have their own strike-assistance setups. To prepare for the possible steel strike, for instance, the Steelworkers Union has been holding a series of conferences around the country for local union officers. These officers are told of public-aid programs, eligibility rules and application procedures.

Congress, Courts Study Issue

The debate over public aid to strikers is being echoed in Congress and the courts as legislators and jurists consider the issue.

States vary considerably in the availability of public-aid benefits in walkouts. Only two states, New York and Rhode Island, permit strikers to collect unemployment compensation, and both have a waiting period of seven weeks before a striker can start collecting.

Most states permit strikers to go on welfare if they meet the normal eligibility criteria. GE says it found in

its long strike that of the 33 states in which it operates, only Texas, Virginia and Wisconsin "showed any disposition to bar strikers from collecting state welfare aid."

Under federal guidelines, food stamps, which permit needy families to greatly expand their grocery-buying power, can't be denied strikers who meet normal income guidelines. For instance, a striker's family of four with no more than $1,500 in savings and less than $30 in current monthly income could obtain free a monthly allotment of $108 of food stamps; if the family had $100 monthly income coming from, say, a working wife, then the $108 in stamps would cost $25.

Congressional opponents of giving food stamps to strikers have made several close but unsuccessful attempts to ban the practice. Such an amendment was defeated in the House last December and only last month an attempt to tack a no-stamps-for-strikers clause onto the Agriculture Department's appropriations bill for the current fiscal year was defeated, 225-172.

Key Court Case

In a key legal case, the Supreme Court recently declined to review a lower court's ruling permitting strikers to receive welfare benefits. International Telephone & Telegraph Corp. had challenged the right of Massachusetts to pay welfare benefits to ITT strikers. But the battle isn't over. ITT is asking the Supreme Court for a rehearing. Significantly, a number of states are joining ITT in asking the court to reconsider. Iowa has filed a friend-of-the-court brief supporting ITT and has been followed by at least 10 other states—Alabama, Arizona, Arkansas, Florida, Maine, Mississippi, North Carolina, Utah, Virginia and Wyoming, according to Lorna L. Williams, special assistant attorney general of Iowa.

Michigan is among the states that can attest to the high welfare costs of a big, concentrated strike. Gerald Miller, a budget aide to the governor, says the UAW strike against GM cost the state about $25 million in added public-aid expenses, including unemployment compensation, besides costing another $100 million in collection of income, sales and corporate taxes. The $25 million covers benefits not only to strikers but also to those laid off because of the strike's impact on other employers.

Are Workers Antiwelfare? Not When They're on It

By a WALL STREET JOURNAL *Staff Reporter*

Workers' attitudes toward welfare may be changing as unions increasingly tap public aid in strikes, many observers believe.

"Once the worker crosses the threshold into the welfare office," his feelings tend to change, says Herbert R. Northrup, who is conducting a major study of the subject. "Once on welfare, you lose your aversion to it," he says. "This means that many people who previously felt that welfare was demeaning now feel that it is their right."

Others agree that the stereotyped antiwelfare views attributed to workers may be incorrect. Leo Perlis, an AFL-CIO official, says that years ago "one of the toughest jobs was to convince our people that it was not a shameful

Plaintiffs' Exhibit 217

thing" to accept welfare when on strike. "Now there is less reluctance. There is no longer the shame," Mr. Perlis observes.

Welfare officials say that striking workers increasingly adopt the attitude that they are entitled to their "share" of public-aid programs because their taxes support the welfare system.

[PLAINTIFFS' EXHIBIT 234A; United Steelworkers of America Advertisement, Syracuse Post Standard, April 6, 1960]

HERE ARE SOME ANSWERS FOR OUR GOOD PEOPLE WHO ARE WALKING THE PICKET LINES AT CARRIER. RUMORS AND COMPANY PROPAGANDA HAVE CONFUSED OR MISLED SOME OF YOU. WE'D LIKE TO SET THE RECORD STRAIGHT. . . .

CAN I LOSE MY JOB WHEN AND IF THE COMPANY HIRES REPLACEMENTS?

NO . . . For several reasons. When we win the strike the company will be forced to allow you to return to work as though you had never been on strike. Also, this will certainly be one of the terms of settlement.

WHEN CAN I START DRAWING UNEMPLOYMENT INSURANCE?

In just 18 days you will all be eligible for unemployment insurance.

SUPPOSE I WENT BACK TO WORK FOR A FEW DAYS. DO I HAVE TO BEGIN MY WAITING PERIOD AGAIN?

NO . . . You will be just required to make up the number of days that you were at work.

Plaintiffs' Exhibit 234A

IS THE INTERNATIONAL UNION BEHIND THIS STRIKE?

YES . . . They have been with us all along. Not one cent of our expenses during the election campaign or the strike have come from our local treasury. The International Union has paid for everything.

DOES THE COMPANY HAVE AS MANY PEOPLE AT WORK AS THEY CLAIM TO HAVE?

NO . . . The company has employed many methods of trying to dazzle you with figures. We have a more accurate count than they have based on checks of the parking lots, buses and inside information. Several of the people who have returned to work are actually representing the union so that we will have correct and accurate information on exactly what's happening inside the plant.

If the company had that many inside and if they were able to produce, do you think they'd be threatening you with layoffs and firings? Would they be begging you to return in print or by calling your home.

AND IF YOU THINK CONDITIONS ARE GOOD INSIDE CARRIER . . . JUST ASK SOME OF THE PEOPLE WHO ARE INSIDE. NO GROUP TALKING IS ALLOWED . . . NO BREAKS TOGETHER . . . MORALE IS AT AN ALL-TIME LOW.

What Are You Afraid Of Carrier?

THERE IS NO MUTUAL TRUST AT CARRIER . . . WHO WOULD TRUST A STRIKEBREAKER?

UNITED STEELWORKERS of AMERICA

SYRACUSE POST STANDARD
APRIL 6, 1960

[PLAINTIFFS' EXHIBIT 236]

U. S. News & World Report
October 3, 1960

LABOR WEEK®

116 DAYS ON STRIKE—
45 MILLIONS IN PUBLIC AID

How taxpayers' money helps to finance strikes—

Steel strikers drew relief grants, got surplus food free. In one State, they collected unemployment insurance. Total of public aid was more than the union put out in strike benefits.

When Long Island Rail Road trainmen struck, they drew from a fund financed by a special tax on the railroads.

An answer now is available to a question that often is asked in this country. That question: Who pays the bills for workers who go on strike after their own money runs out?

The answer, as it involves two big strikes of recent memory, is just now coming to light.

One of these strikes—that of a half million steelworkers in 1959—lasted 116 days. Savings were inadequate to carry many thousands of these workers through the strike. Yet most now are shown to have survived with a minimum of real hardship.

The other strike—involving 1,300 trainmen of the Long Island Rail Road in July—lasted 26 days. These strikers, it turns out, drew incomes amounting to more than half of the pay they would have received if working.

Taxpayers pay. In both strikes, the taxpayer made a sizable contribution to support of the strikers. For the steel strikers, the aid came from the general taxpayer through public-assistance programs. In the case of the railroad, federal "unemployment" benefits went to the strikers at the expense of the railroads of the country, which finance the unemployment benefits for rail workers through a special tax.

The story of how the steelworkers made out during their 116 days of idleness was told on September 19 by I. W. Abel, secretary-treasurer of the Steelworkers Union, in a report to that union's convention in Atlantic City. His report disclosed many details of public aid for strikers —details which usually are not disclosed by unions.

It is Mr. Abel's estimate that about 45 million dollars in relief aid and unemployment benefits was obtained from public agencies in that strike. This aid, in his words, "provided the food, shelter and welfare services that made the strike endurable. The sum exceeded by far the amount that the union poured into the districts and locals. Had the union not secured assistance for its members from these agencies, the union's treasury would have been much more severely depleted."

Reports from regional officials showed more than 22.8 million dollars received from public and private agencies for the steel strikers. But total contributions from non-union sources were said to be "far greater, perhaps even twice the amount this figure indicates." That was because some regions kept no records of the aid they had received.

The union itself also drew heavily from its own funds to help support the strikers. Mr. Abel told a union meeting on April 30 that the international union and its locals had spent 20 million dollars on the strike. The Steelworkers Union does not pay weekly "strike benefits," as many unions do, but members receive assistance from the union when the need is great.

"Outside union sources," Mr. Abel said, "provided the major part of strike relief during the 1959 steel strike." All sources together contributed an estimated 65 million dollars to the strikers.

Where it came from. The breakdown supplied by the report shows that public-assistance payments ran to more than 22.7 million dollars, with many areas not listing their figures.

Voluntary agencies, such as community chests and united funds, provided an additional $118,712.

Private agencies and public officials in some areas balked at giving assistance to the steel strikers. As a result, Mr. Abel suggested union officials should put more pressure on the agencies, and engage in greater political activity, to insure greater aid in future strikes.

"Politics" involved. Pointing out that only two States—New York and Rhode Island—allow strikers to collect unemployment benefits under State insurance plans, the report has this to say:

"Public-assistance agencies vary widely from State to State, both in the adequacy of legal coverage and the reasonableness with which local welfare officials . . . grant assistance. As in the case of unemployment compensation, adequate public-assistance standards are only secured by political activity. Once secured, they must be continually watched so that public officials continue to administer the laws fairly."

To that end, Mr. Abel recommended maintaining continuous, year-round relationships between the union officials and State welfare officials. He suggested also that pressure be exerted on private welfare agencies which decline to give help to strikers. He advised union leaders to "examine the extent to which the administrators of the voluntary agencies fulfill the purposes for which so many Steelworkers contribute generously."

Unemployment pay. Part of the public assistance that went to strikers was a payment of 9 million dollars collected by New York steelworkers from the State unemployment insurance fund. The report says that 35,000 workers shared in this payment, after going through a 49-day waiting period.

The New York experience, Mr. Abel said, offers a political lesson for his members in other States. He reported: "This staggering sum of assistance to our striking members in New York clearly demonstrates the need for political activity to legislate humane and fair unemployment-compensation laws."

In a further breakdown of the figures, the report shows more than 12 million dollars received in direct payments from State and county agencies.

Officials of the Pennsylvania public-welfare department told "U. S. News & World Report" that striking steelworkers in that State had collected about 18 million dollars in public assistance during the 116-day walkout. At the peak period, 16,489 families of steel strikers were on the relief rolls, with aid going to a total of 69,186 persons. Average payment to a family during the strike was about $30 per month.

The union report shows that about 179,000 of the steel strikers reside in Pennsylvania—indicating that fewer than 10 per cent of them went "on relief."

Food, too. Strikers obtained help in still another form—from the surplus-food program of the U.S. Department of Agriculture. Mr. Abel reported that 105,114 families of strikers got 7,133,210 pounds of surplus foods valued at 1.4 million dollars.

Still other help was available for strikers. Mr. Abel said the union committee with headquarters in McKeesport, Pa., was able to get extensions of time for payment of various bills. These included 120 extensions on light bills, 117 on gas bills, 26 on grocery accounts, 68 on rent payments, 77 on mortgages, 20 on hospital bills, and 18 on furniture bills. The committee also headed off constables with notices to strikers in 22 cases, "sheriff sales" in 15 others.

Not all States co-operated with the union committees in providing relief. Regional union offices in the following States reported no public assistance: Maryland, Georgia, Alabama and Texas. In others, regional officials failed to file reports.

Steel regional leaders in these States gave the following totals on public assistance: Massachusetts, $13,268; New York, $334,208; Pennsylvania, $7,257,402; Ohio, $1,468,019; Indiana, $2,085,463; Minnesota, $1,067,213; and Utah, $96,698.

Insurance for strikers. Public-welfare payments were not involved to any extent in the Long Island rail strike. Here the 1,300 striking members of the Trainmen's Union collected a total of $235,000 in unemployment benefits from the federal unemployment-insurance program for railroad employes.

A federal official said that 4,100 other employes of the Long Island got $750,000 in unemployment pay under the same program, having been laid off because of the strike.

This federal program for rail workers is financed entirely by a special tax against the railroads—which puts the railroads in the position of financing strike benefits for employes who walk off the job. This "strike pay" can run as high as $51 a week.

The Trainmen's Union also paid strike benefits to its members on the Long Island, so that the average trainman on strike collected about $85 a week from the union and Federal Government. The average pay when working is about $154 a week.

New York officials said county welfare departments would not issue relief checks to a Long Island striker on top of this unemployment and strike benefit except in a case of extreme hardship.

But the record of these two strikes indicates that unions often are able to get federal, State or county assistance—plus private welfare aid—to tide members over in a big strike. The taxpayer helps to keep the strike going.

[PLAINTIFFS' EXHIBIT 238]

USWA Strike and Defense Fund Rules

The following Rules have been adopted by the International Executive Board of the United Steelworkers of America to implement Article XIV, Section 17 of the In-

ternational Constitution which provides for the establishment of a separate Strike and Defense Fund and that: "Expenditures from the Fund shall be determined by the International President and International Secretary-Treasurer, subject to the review of the International Executive Board."

1. Strike Authorization. Article XVI of the International Constitution provides that: "No strike shall be called without the approval of the International President." There must be strict adherence to this requirement. Strike relief will not be given for a Local Union if a strike is called without the approval of the International President.

2. Strike Relief Allotted Only On Basis of Need. The current resources of the Strike and Defense Fund and the resources anticipated in the next few years leave no alternative but to allot strike relief only on the basis of need, and not as a matter of right.

Plans for expenditures from the Fund must take into account the potential needs of the entire membership of some 1,200,000 in the United States and Canada. These needs may be many and varied. The number of members affected in particular strikes could range from a handful in certain cases to about 450,000 in basic steel. Very large groups of our membership could be affected in the event of strikes in the can, aluminum, nonferrous and other industries.

Thus, if strike relief benefits were to be paid as a matter of right, the entire Fund could be exhausted by a long

strike in any of the industries where our membership is large. In such a case, the rest of our members would be left without aid from the Fund if they should be required to strike to obtain fair and equitable contracts.

At appropriate times in the future, the International Executive Board will be able to review this matter based on experience over a period of years and the status of the Fund at the time.

3. All Other Available Resources Must Be Utilized. In order to obtain strike relief allotments from the Fund, a Local Union must demonstrate that all other available resources are being utilized, and that an effective strike assistance program has been organized.

Food, clothing, and other forms of assistance are available to striking employees from a number of different sources in different communities. These sources include agencies of the federal, state and local governments, private welfare and community services organizations, credit unions, Local Union funds and District strike funds. In addition, temporary employment opportunities may be available for many strikers, and all strikers can draw upon any of their own assets to help tide them over.

Pamphlet No. PR-305 entitled, "Beyond the Picket Line," published by the International Union, explains how to organize a strike assistance program. The procedures called for in this pamphlet must be followed by Local Unions to the extent applicable in individual strike situations.

4. Minimum Waiting Period. No strike relief allotments shall be made from the Strike and Defense Fund until after a strike has continued for three (3) weeks. This is the minimum waiting period for all strikes. Allotments, however, will not automatically start in the fourth week since, in many instances where other resources are available, it will not be necessary for a Local Union to seek allotments from the Fund until the strike extends for a longer period. Exceptions to the minimum waiting period will be made to take care of cases of more immediate need which may confront individual strikers such as those in a new Local Union.

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PLANNING CHECK LIST

- ☐ Strike Assistance Committee appointed and chairman selected.
- ☐ Rules of USWA Strike and Defense Fund read at Local Union meeting.
- ☐ Contact major social welfare agencies (Welfare Department, Food Stamp Program, etc.) and obtain relevant information regarding eligibility requirements, agency addresses and specific services provided, etc.
- ☐ Are additional phones necessary?
- ☐ Interview forms prepared and sufficient copies duplicated.
- ☐ Selection of physical facilities for strike assistance headquarters. Where will members be interviewed?
- ☐ Have copies of the form, "Protect Yourself," been ordered in sufficient quantity?

- ☐ In addition to Strike Assistance Committee members, are more strike counsellors needed? If so, have they been recruited and trained?
- ☐ Do all strike counsellors know what hours they are assigned to strike headquarters?
- ☐ Does the financial secretary have necessary ledger forms?
- ☐ Has the central labor body been notified of the strike?
- ☐ Will other unions be solicited for financial help?
- ☐ "Thank you" letters sent to appropriate unions, social agencies, and other cooperating community groups and organizations at the conclusion of the strike.

[PLAINTIFFS' EXHIBIT 239]

WALTER J. BURKE, SECRETARY-TREASURER
I. W. ABEL, PRESIDENT
JOSEPH P. MOLONY, VICE PRESIDENT

United Steelworkers of America
AFL-CIO-CLC
1500 COMMONWEALTH BUILDING
PITTSBURGH, PA. 15222

PHONE: 471-5254
CABLE ADDRESS: USWA

May 16, 1969

To all District Directors, Staff Representatives, Local Union Presidents and Recording Secretaries.

Dear Sir and Brother:

On April 29, 1969 the International Union Executive Board adopted rules and regulations for the operation of

our Strike and Defense Fund. Enclosed is a copy of these rules for your information and guidance.

These rules deal with a number of problems involved in the equitable operation of a Strike and Defense Fund. Paragraph 2 provides for the allocation of strike relief on the basis of need. The reasons for this are clearly stated therein and the Executive Board adopted this principle in order to assure all of our Local Unions that the resources of this Fund will be available to them when and if the need arises.

Paragraph 3 emphasizes the fact that the Strike and Defense Fund is but one of many resources to be used in time of strike. It lists many of these resources which are also outlined in detail in our Pamphlet No. PR-305 entitled, "Beyond the Picket Line", an updated copy which is enclosed. In this regard I would encourage the continuation of all District and Local Union Strike Funds as an additional and important source of support for strikers.

You will note that Paragraph 6 of the rules provides that the International Union Executive Board develop a formula for determining the maximum weekly allotment allowable for any given strike situation. The Executive Board has decided that, for the present, this maximum allotment will be based on a $10 per member figure. This $10 allotment figure bears no direct relationship to the amount of assistance a needy striker may receive. Within the confines of allotted funds, individual assistance will be related to the degree of need rather than to any arbitrary and fixed figure.

Hopefully, as time goes by, our Fund will increase and the Executive Board will be able to improve the maximum allowable allotment.

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I urge that you thoroughly acquaint yourself with these rules and explain to the members of your Local Union the grave need for the careful administration of this Fund. Properly utilized, this Fund can be an important source of support to our members in times of stress.

Sincerely and fraternally yours,

/s/ WALTER J. BURKE

Walter J. Burke
International Secretary-Treasurer

Enclosures

[PLAINTIFFS' EXHIBIT 241; Article from Buffalo Courier Express, December 16, 1969]

Workers Forego Strike Benefits

SCHENECTADY (UPI)—Members of one of the largest union locals in the General Electric Co. strike voted Monday to transfer their strike benefits to workers in other states while they collect New York unemployment checks, according to union officials.

Joseph Mangino, business agent for the 12,500 members of Local 301, International Union of Electrical Workers, said the "solidarity" vote came at an "overflow" local meeting as the GE strike entered its eighth week.

Because the strikers in New York State are now eligible for state unemployment payments, Mangino said, they voted to send the $12 weekly per man in union strike benefits to strikers in other states who do not receive unemployment checks.

[PLAINTIFFS' EXHIBIT 242; Transcript of Labor News Conference, Mutual Broadcasting System, Tuesday, December 16, 1969; Subject: Family Assistance to GE Strikers; Guest: Leo Perlis, director of the AFL-CIO's Department of Community Services Activities]

[1] MUTUAL ANNOUNCER: The following time is presented as a public service by this station and the Mutual Broadcasting System.

HARDEN: LABOR NEWS CONFERENCE. Welcome to another edition of LABOR NEWS CONFERENCE, a public affairs program brought to you by the AFL-CIO. LABOR NEWS CONFERENCE brings together leading AFL-CIO representatives and ranking members of the press. Today's guest is Leo Perlis, director of the AFL-CIO's Department of Community Services Activities.

Through local Community Services Committees, union members work throughout the year to help their fellow union members and their fellow citizens who don't belong to unions, meet personal, family and community problems. Right now, they are making a special effort to help meet the needs of the 150,000 union members and their families on strike against the General Electric Company. Here to question Mr. Perlis about assistance to the GE strikers and their families, and union-sponsored community services in general, are Sam Sharkey, labor specialist for the Newhouse Newspapers, and Neil Gilbride, labor correspondent for the Associated Press.

And now, Mr. Gilbride, I believe you have the first question?

Plaintiffs' Exhibit 242

GILBRIDE: Mr. Perlis, just how is the Community Services Department helping the General Electric Company strikers?

PERLIS: Well, we are involved all over the country in organizing community resources and community facilities to help the GE strikers and their families, on the basis of need, regardless of the cause of that need.

Our full time AFL-CIO Community Services people in communities where there are GE strikers are engaged almost full-time in assisting the local unions in obtaining food, clothing, medical care, legal aid, and other services and facilities necessary to sustain families in time of need.

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GILBRIDE: Mr. Perlis, how about direct cash payments of public relief? Are there any circumstances under which a striker can get such money?

PERLIS: Yes. As a matter of fact, in two states, strikers may obtain unemployment compensation.

In New York and Rhode Island, after a waiting period, strikers are entitled to unemployment compensation. In New York, the waiting period is seven weeks, for example.

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[2] Of course, as you know, Mr. Sharkey, the AFL-CIO is raising money from all of our members for the national strike fund, and this is something that the Secretary-Treasurer of the AFL-CIO would know more about than I.

Plaintiffs' Exhibit 242

Our job, in AFL-CIO Community Services, is to mobilize community resources to provide the basic help that our people need. I would think that in the long run, if the strike continues over a long period of time—and we hope it is resolved satisfactorily—more help will probably come —most assuredly come—from community resources than from any other source.

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GILBRIDE: Mr. Perlis, when a worker goes on strike, what kind of problems worry him most? Which are the most important?

PERLIS: First of all, Mr. Gilbride, he worries about his economic state—will he be able to make ends meet? His wife also worries about that.

Second, he worries about the time on his hands.

Third, he worries about his family relations. In other words, his marital relations, his family problems, his relationship to his wife, his children, etc.

Fourth, he worries about all the problems that accumulate, in terms of his going back to work, the settlement of the strike, and so forth.

I suppose those really embrace his concerns, in a general way.

But, the economic worry is number one; the time on his hands is number two; and his family problems are number three.

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[PLAINTIFFS' EXHIBIT 246; Excerpt from Plaintiffs' Exhibit 261, Welfare and Strikes: The Use of Public Funds to Support Strikers, A. Thieblot, Jr., and R. Cowin (Industrial Research Unit, The Wharton School, University of Pennsylvania, 1972), page 58]

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The experiences of the General Electric and nonferrous metals strikes confirmed that organized labor had discovered the welfare system and compelled a recognition that most future strike assistance for union members is likely to come not from unions, but from public sources. Leo Perlis informed one of the authors that large national and international unions must depend on public funds in order to utilize the strike as a tool of collective bargaining. He said that the cost of engaging in a nationwide strike is too high to permit large unions to support members through their own funds. He affirmed that public aid is a much more important source of strike support than is the union strike fund.[88] The case studies which follow support this contention.

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[88] Interview with Mr. Leo Perlis, July 15, 1971.

[PLAINTIFFS' EXHIBIT 251]

AN OPEN LETTER TO ALL MEMBERS OF IBEW 1357 AND EMPLOYEES OF HTCO

In view of our recent experience, exercising our rights of labor, a strike was brought against our employer HTCO. The strike is over, but our fight continues. One of the issues still to be resolved is the basic right we have to compensation during a called strike.

All of the big business interests have come together—including the U.S. Chamber of Commerce and the Hawaii Employer's Council—to aid Hawaiian Tel management in denying us our unemployment compensation. If they succeed in this anti-labor plot, it will have serious consequences for workers in all unions, in Hawaii and on the Mainland.

With grave concern, and in the defense of our right to strike, a workers committee has been formed. It includes workers from various industries, and rank and file union members from various Hawaii locales who have joined in this effort to protect our rights to unemployment compensation, and to carry out effective strike actions.

A petition of protest has also been drafted by the WORKERS COMMITTEE TO DEFEND THE RIGHT TO STRIKE, to be presented at the hearing in federal court before Judge Pence on Sept. 24, 1974. Your interest, support and participation is needed. This struggle deserves our 100% backing, for it clearly dramatizes the never-ending struggle of the common laborers—you and I, against greedy unfeeling employers.

WORKERS UNITE—
DEFEND THE RIGHT TO STRIKE!

Plaintiffs' Exhibit 251

MAHALO!

Gwen Pascua—IBEW 1357
Ko Hayashi—HOE HANA newspaper
Marilyn Yamamoto—IBEW 1357
Adolph Samuel—UPW 646
Jack Komenaga—Ironworkers 803
John Witeck—Labor-Community Alliance
John Grove—HFCT

for: THE WORKERS COMMITTEE TO DEFEND THE RIGHT TO STRIKE

•THINGS *YOU* CAN DO:

1) Sign the *petition* and help circulate it to get as many names as possible.

2) *Join* our workers committee and kokua.

3) Come to the mass rally/demonstration on Sept. 24, 4 p.m. in front of the Federal Court building.

4) Contact your friends in other unions and organizations to get their *support.*

5) Write your personal views on the issue in a letter to Pence, and send it to our committee to be presented on Sept. 24.

For more information please contact us:

THE WORKERS COMMITTEE TO DEFEND THE RIGHT TO STRIKE
1565-A Moani Street, Honolulu, Hawaii 96819
phone: 841-0077 (Ko) 536-2067 (Gwen)

[PLAINTIFFS' EXHIBIT 252]

A PETITION IN DEFENSE OF THE RIGHT TO STRIKE

We, the undersigned, believe the right to strike, to withhold one's labor in order to gain better political and economic conditions for one's self and all workers, is a basic political and human right.

We see many attacks on this right to strike—compulsory arbitration, anti-dock strike legislation, and legal challenges to the right of strikers to collect food stamps and unemployment compensation for the period of the strike.

We know workers for decades have struggled to win such rights as unemployment compensation. We oppose any attempts by courts and employers to undermine this hard won right, and try to starve strikers to submission.

We earn this compensation by our labor. When we are forced to strike by an employer, the collecting of this compensation is a right due each worker. We will not let our right to strike and receive unemployment compensation be taken away from us. We pledge ourselves to oppose this and all efforts to rob us of our rights to strike and bargain collectively.

WORKERS UNITE—
DEFEND THE RIGHT TO STRIKE!

• • • • •

for more information please contact:

THE WORKERS COMMITTEE TO DEFEND THE RIGHT TO STRIKE

1565-A Moani Street, Honolulu 96819
or call:

841-0077 (Ko) 536-2067 (Gwen)

[PLAINTIFFS' EXHIBIT 253; Covers and pages 1, 4-9]

Beyond The Picket Line

PAUL FROMM, C.S.R.
PLF. DEF. EXH. V-V
DATE 10-1-74

HOW TO ORGANIZE A STRIKE ASSISTANCE PROGRAM

BEFORE YOU START

NO two strikes are ever the same and no strike assistance manual can possibly cover all the local factors that may have a bearing on a strike situation.

However, while the details of individual strikes may differ, the preparation is essentially the same for all strikes. Because this handbook is written in rather general terms, keep the following points clearly in mind:

1. Material assistance given through public welfare agencies begins and ends at state borders. Each state has its own set of laws regulating public assistance. No two states have exactly the same welfare laws, although every state provides, or permits, some system of county, city or township agency whose primary function is to give food, shelter, clothing and medical care to those requiring material assistance.

Some states have more liberal laws and provide more generous allotments than others. Some bar men on strike from public assistance. In fact, before this manual is a year old, some state welfare laws will be changed.

There are also differences in the interpretation of state and local welfare laws by relief administrators. This is especially true of local relief administrators where strike welfare laws are more permissive than specific. In any event, a constant check should be maintained to see that local welfare officials and supervisors observe state provisions.

One of the first steps then is to have a thorough knowledge of your state, county, or city welfare laws and regulations. The material presented in this manual must be adapted to local conditions and to the local situation. This information must be obtained locally.

2. The number and kinds of voluntary health and welfare agencies where AFL-CIO members can obtain help during a strike will vary from community to community.

This will permit an organizational meeting to be held and allow the committee to decide on its program without undue pressures from immediate welfare problems.

If the Community Services Committee assumes responsibility for the strike assistance program, the CSC officers will, of course, continue to function in that capacity. However, if a special committee is organized, officers are either appointed by the local union president or elected in accordance with by-laws of the local. Care should be used in obtaining the best possible person to head this important group. The chairman should be free of all other strike duties.

In strikes involving several local unions or where a large number of men are affected, several subcommittees may be necessary. Traditionally these groups include: (1) a fund raising subcommittee; (2) a job-finding subcommittee, and (3) a subcommittee in charge of a commissary. There may be others, depending on the local situation.

The specific functions of these subcommittees will be discussed in a latter section of this manual.

SUMMARY OF THE FIRST STEP

There can be no effective strike assistance without a responsible and active committee. A strike assistance program can best be handled by the local union's Community Services Committee.

If the local union does not have a standing Community Services Committee, a special strike assistance committee must be organized. To organize this committee the local union may obtain the help of the local full time AFL-CIO Community Services Representative. If there is no full time local Community Services Representative, the chairman of the local central body Community Services Committee should be contacted. The functions of this committee are:

1. Meet with social service representatives.
2. Train strike counsellors.
3. Open and service a strike assistance center.

MEETING WITH SOCIAL AGENCIES

THE next step in planning for strike assistance, after the designation of a committee, is a survey of the services and assistance available from public and voluntary agencies. In other words: What community resources are available? What kinds of assistance can be expected from tax-supported welfare services? From voluntary agencies?. How does one go about getting help? Where are the agencies located? Who are the agency executives? What are the eligibility requirements?

These questions must be answered at the very outset of strike relief planning.

Before seeking answers to these and similar questions it might be well to sketch in the function of social agencies.

As stated earlier, there are two basic kinds of agencies—*public* or *tax-supported agencies,* and *voluntary* or *private* agencies supported through *voluntary contributions* and *donations.*

Public agencies are services created by law, regulated by law and financed by tax dollars. Officials in charge of public agencies are either elected or appointed through government channels. More than 90 percent of all assistance to needy persons is provided through local, state or federal government agencies. Meeting basic economic needs such as food, shelter, clothing and medical care is generally accepted to be a responsibility of government.

In most states welfare services are channeled through a township, city or county welfare or relief office. As a rule these agencies or bureaus are located in city hall, the county courthouse, or some other municipal building.

Exact names of these agencies will vary from state to state (Public Welfare Department, Department of Public Assistance, etc.) but every state gives assistance in one or

more of the above categories. In most, if not in all states, public assistance is woefully inadequate and bogged down in needless red tape.

In many states local welfare administrators and supervisory boards have a great deal of authority. In such cases the interpretation of state laws is left to local discretion.

Private or voluntary agencies are created by interested citizens and supported through their voluntary contributions and membership fees. During the past 30 years voluntary agencies have banded together for fund raising purposes into a United Fund or Community Chest. Numerous appeals and campaign costs are thus reduced through this one-shot, federated method of fund raising.

For the most part private social agencies give limited financial or other material assistance. Such assistance is usually given on a short-term or emergency basis. Voluntary agencies can be helpful in giving assistance to single men and non-residents who are not eligible for public assistance.

Another important function of the voluntary agency is as a "lever of pressure" to get public welfare supervisors to ease up eligibility requirements and expedite assistance.

Most communities usually have one or more of the following voluntary agencies providing some forms of limited emergency assistance:

Salvation Army
Family Service Society
Red Cross—Home and Veteran Departments
Various Catholic, Protestant and Jewish
Social Services

The Community Services Committee or strike assistance committee should make a careful canvass and listing of all agencies, both public and voluntary, that can give assistance to strikers.

Plaintiffs' Exhibit 253

Following is a typical listing of agencies likely to be found in a medium size city. Many communities will not have such an extensive network of services. Others will have many more.

Agency	*Location*	*Type of Assistance*	*Executive or Contact*
Stark County Welfare Department (Public)	Room 10 Courthouse PL. 6-1500	General relief for county residents	Harold Coy
Center City Dept. of Public Assistance (Public)	City Hall 3rd Floor. CO. 9-1000	General relief for city residents	Herbert Johnson
Stark County Veterans' Bureau (Public)	Room 8 Courthouse PL. 6-1500	General relief for veterans. Counsel on federal programs	Oscar Rem
Stark County Chapter American Red Cross (Voluntary)	44 Wood Street MU. 8-5000	Emergency aid for families of servicemen	Miss Mary Rahle
Family Service Society (Voluntary)	Dollar Bank Bldg. RI. 4-5451	Family counselling temporary aid	Dan M. Reich
Salvation Army (Voluntary)	210 Federal Street RI. 4-5618	Emergency aid temporary housing	Capt. George Allen
Catholic Charities (Voluntary)	Diocesan Office Bldg. Wood Street MU. 9-3560	Temporary assistance for needy	Fr. Joseph Coach

The above check-sheet is only a simulated listing. It indicates one method of determining the agencies that should be invited to meet with the Community Services Committee.

Later the committee will want to make a more detailed *fact sheet* or *directory of agencies* which summarizes all possible services and facilities that can be used in a strike assistance program. In many communities such directories are available from the local Community Chest, United Fund or Council or Social Agencies.

In addition to inviting representatives from public and

Plaintiffs' Exhibit 253

voluntary agencies listed above, members of the local union should also meet with spokesmen from the following agencies and organizations:

State Employment Office
Public Housing Authority
Blue Cross, Blue Shield Plans
Legal Aid Society
Community Welfare Council or Council of Social Agencies

If possible, the *Community Services Committee* of the local *central labor body* should call the pre-strike meeting of social agencies. The meeting should be called, of course, at the suggestion of the local(s) on strike.

There are several good reasons for having the central labor union initiate the conference.

In most cases the central labor body CSC will have had previous relations with the community's social agencies. In all probability the central CSC will have worked with the agencies in past strike situations, in organizing union counselling classes and in fund raising campaigns.

Another reason for having the CLU-CSC arrange for the meeting is that the invitation will have added importance since the CLU represents all AFL-CIO affiliates in the area.

In a community where there is a full-time AFL-CIO community services representative with the local United Fund or Community Chest, he will usually initiate action for a joint meeting between social agencies and the strike assistance committee.

Among the objectives of the agency meeting are the following:

1. To canvass agencies for the purpose of determining assistance and services available.
2. To set up a uniform referral system between the strike assistance committee and the agen-

cies which authorize the strike counsellors to act as referral agents.

(a) Discussion under this point will cover the use of the Community Information and Referral Center, if there is such a clearance and referral service in the community.

(b) Included, too, will be a discussion to familiarize agency personnel with the referral form and the interview procedure to be used by the union.

3. An effort should be made, in cooperation with the voluntary agencies, to have eligibility requirements for public assistance liberalized for strikers. It should be pointed out that a strike is a temporary emergency and therefore requirements dealing with automobiles, TV sets, telephones, life insurance and property should be waived.

4. This joint meeting may also designate specific agency representatives to be contacted by the union on all strike-related cases. The union should name a union liaison to be contacted by agency personnel. It may also be advisable at this first meeting to plan for future periodic sessions with agency heads during the course of the strike.

A specific case history will demonstrate the purpose and the importance of a meeting between social agencies and the strike assistance committee.

A striking local union, following procedures outlined in this manual, requested the CSC of the local central labor body to call a meeting with the community's social agencies. Here are some of the topics discussed at that meeting:

(a) Background information on the strike. This was done by a union spokesman primarily for the benefit of agency representatives. Information included possible dates of the strike, the last pay, number of men on strike, number of families involved, where most of the union members live, etc.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

GEORGE MEANY
President

LANE KIRKLAND
Secretary-Treasurer

AFL-CIO
DEPARTMENT OF COMMUNITY SERVICES
815-16th Street, N.W., Washington, D.C. 20006

LEO PERLIS
Director

Publication #78
October 1970

[Plaintiffs' Exhibit 276; Transcript of 1973 Recorded Telephone Message; New York City]

Local 1101, CWA. Tuesday, October 24th, 1973. (SIC) Gregg Tubby, secretary reporting.

The New York Telephone Company today went to court in New York State attempting to block any one on strike from collecting unemployment benefits. It seems they are still feeling the results of the seven-month strike. Their bill for our unemployment must have been many millions of dollars, and now our political involvement can start paying dividends.

The company again has started asking our members to sign "The Codes We Work By." As in the past, this local's position is that we are not, I repeat, *not* going to sign this nonsense.

This local today won a dispute with Western Electric in the Bronx as to who is going to install 701 equipment in the Bronx. It was won in our favor, meaning many hundreds of hours of work for our members.

Thank you for calling.

Keep in touch with these tapes.

[Plaintiffs' Exhibit 277; Transcript of 1973 Recorded Telephone Message; Staten Island]

CWA, Local 1102. Thursday, October 25th. This is Jim Curran.

The New York Telephone Company along with three other Bell System companies filed suit in Federal Court this week seeking to overturn the New York State law that grants

unemployment insurance to strikers after seven weeks. The company is attempting to have the unemployment insurance to strikers declared unconstitutional. In all probability, this case will go to the Supreme Court for an alternate ruling, pushed all the way by the benevolent bitch Ma Bell.

The labor unions have supported the benefits for strikers. and have played an active role in Albany in opposing efforts to repeal the law. It amazes this local when some of our members ask—why are we involved in politics, and why do we support certain candidates for public office? If companies with millions of dollars are fighting against your benefits, who do you think is fighting for you—the working man and woman.

The shop steward's training class scheduled for October 31st, is cancelled. Training classes will continue on Wednesday, November 7th, and Wednesday, November 14th.

Thank you for calling.

[Plaintiffs' Exhibit 283; Transcript of 1971 Recorded Telephone Message; Westchester County]

Friday, December 10th, 5:00 p.m. This is Bob Brannigan, craft representative, installation and repair.

Would you like some good news for a change? There will be a Christmas party for members of Local 1103's children on Saturday, December 18th at the Westchester County Center. Hours are: 9:00 a.m. to Noon; babies to 10 year olds. Free toys, games and candy, plus a real live Santa Claus. Come and have some fun for a change.

The Christmas party is located in the Little Theatre, second floor. We ask that you call the union office and tell the receptionist the number of children you are bringing and their ages so that our party committee can tell Santa how many to expect.

Bargaining continued today and there will be a full report on Monday.

Steward and chief steward meetings have concluded for the time being and were extremely encouraging. Keep picketing. It's the best way to show Mother Bell we refuse to kneel to her archaic anti-labor techniques in bargaining.

Redtop. Watchdog. Blue fish. I repeat: Redtop. Watchdog. Blue fish.

This is Local 1103, 791 Central Avenue, Scarsdale, New York.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 290; Transcript of 1972 Recorded Telephone Message; Westchester County]

Tuesday, January 4th. 5 p.m. This is Bob Brannigan, craft rep, installation-repair.

New York newspapers be damned. We get better and fairer coverage outside the metropolitan area. For example:

The Charlotte Observer, North Carolina, December 26th, gave our strike 2½ columns and mentioned many things that we were not aware of. Such as, 1 Liberty Plaza, Manhattan, 54 stories, fully furnished, carpeted and painted

for the last two months. The only thing missing is tenants because they can't get phones.

Uptown: The Avon Building, 50 stories almost finished, no phones. And Rockefeller Center, two buildings nearing completion, one is for Standard Oil of New Jersey. So far it has only two or three tenants, no phones. The other building is for McGraw-Hill Publishing Company. The Esso Building was lucky, they snuck in ahead of our strike.

This is the type of coverage we should get from New York's yellow sheets. The Miami Herald gave us one whole column, Friday, December 17th, mentioning a new supermarket on upper Broadway where the manager has to use the booth outside on the sidewalk to call his main office every two hours.

So far the waiting list that the company admits to in New York City totals 223,000. Other business giants affected are Dow Jones, Kidder Peabody, AT&T, even Local 1101 waiting to move to new headquarters.

Bargaining continued this afternoon as the strike ended its 175th day.

Remember, no picketing, no aid.

To digress for a minute, let me ask you all to say a prayer for Northern District executive board member, Haldore Johannesen, who suffered a heart attack on New Year's weekend and is presently in the intensive care unit of Northern Westchester Hospital.

This is Local 1103, 791 Central Avenue, Scarsdale, New York.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 295; Transcript of 1972 Recorded Telephone Message; Queens County]

Friday, March 24th. This is John Renck.

At the present time Lobbyist for a repressive management interest group in the State of New York is attempting to take away unemployment insurance benefits for striking workers. At the forefront of this campaign, as you might have suspected, is New York Telephone.

During the recently concluded strike, telephone workers received jobless benefits that permitted us to provide the barest of necessities for ourselves and our families. The overwhelming majority of these workers never had occasion to apply for jobless benefits in the past and hopefully will not have need for them in the future. But the right of workers and their families to at least exist during an industrial dispute must be protected.

You can assist in this fight by immediately writing your State Senator or Assemblyman at the Capitol, Albany, New York, zip 12224 and vote against the Smith-Walker Bill that seeks to deprive you of these benefits.

Stewards are reminded to continue to collect monies for all those members that are still suspended or dismissed for strike activity. You're back on the job receiving pay but those affected by the company's desire to take a pound of flesh soon will need financial assistance. Returns have been good for most areas but others have not done the job. If your steward hasn't asked you to contribute, ask him why he hasn't. It's probably because he doesn't call the tape as often as he should. Stewards are directed to give this money to their district steward for forwarding to the

Plaintiffs' Exhibit 314

local union office. To those who have contributed to date, thank you for your generosity.

This is Local 1106 CWA, AFL-CIO, Queens County, New York.

Thank you for calling.

[PLAINTIFFS' EXHIBIT 314; CWA Local 1101 Publication Distributed to Members in Preparation for 1971-1972 Strike Against the Bell System]

COMMUNITY SERVICES
ADVANCE STRIKE RELEASE
WHAT TO DO WHEN THE STRIKE IS ON

(1) SEEK TEMPORARY EMPLOYMENT. Below, is a list of New York State Employment Centers where you can apply for temporary, full or part time jobs. Pick out one in your area.

N. Y. STATE EMPLOYMENT CENTERS

MANHATTAN—		
	Industrial—255 W. 54th St.	Co-5-2700
	Clerical —575 Lexington Ave	PL-9-1020
BROOKLYN—		
	Industrial—250 Schermerhorn St.	855-7500
	Clerical —175 Remsen St. (nr. Boro Hall)	522-2428
BRONX—		
	Industrial—358 E. 149th St.	993-1321
	Clerical —575 Lexington Ave	PL-9-1020

QUEENS—

42-15 Crescent St. LIC	784-0855
42-09 Main St. Flushing	463-4242
147-10-90th Ave. Jamaica	739-1775

NASSAU Co.—

344 Fulton Ave. Hempstead, NY	IV-6-3434

ROCKLAND Co.—

31 So. Main St. Spring Valley, NY	EL-6-6500

WESTCHESTER Co.—

78 Main St. Yonkers, NY	YO-9-5000

(2) REGISTER FOR UNEMPLOYMENT INSURANCE. —On the first full day off the job report to the New York State Unemployment Insurance Office in your zip code area. A list of offices is available at Local 1101 Headquarters. Experience has shown that the normal waiting period for unemployment insurance payments during a labor dispute is seven weeks. BUT, if you respected the picket lines out of fear of reprisal for your personal safety, the N.Y. State Unemployment Insurance has been known to process claims after a minimum two week waiting period.

LOAN RELIEF FOR MEMBERS—Local 1101's Community Services has made arrangements with the Amalgamated Bank of New York, 11-15 Union Square West, New York's only Labor Bank to grant loans to members of 1101 if needed, during the strike. The Amalgamated Bank has made arrangements to grant a 60 day grace period on loan payments so that the first payment would not be due for two months from the date of the loan.

EXAMPLE: Loan Date, May 15, 1968, First payment Date, July 15, 1968. Loans may be applied for in person, by mail or telephone by contacting Mr. Philip J. Layh or Mr. John O'Connor at A15-4334. Applicants should introduce themselves as members of Local 1101, CWA and are applying for a STRIKE LOAN. While involved in a work stoppage, wage earners usually experience a great deal of difficulty when attempting to obtain a personal loan from a bank. The Amalgamated Bank recognizes their unique position in regard to strike needs, and will act for members where other banks may not. Any non-member who has difficulty in getting a STRIKE LOAN from the Amalgamated Bank of New York, should report personally to Nancy Bracco, at Local 1101 Headquarters, 224 W. 49th St. to remove any roadblock. Meetings are under way in an effort to obtain temporary jobs through the good offices of the NY Central Labor Council and the Taxi Union. More information will be released as soon as possible. Affiliated Centers of the Dept. of Social Services of the City of NY (for "Instant" relief) have been contacted.

SURPLUS FOOD PROGRAM people have set up a meeting concerning members needing help. More on this will follow too.

CWA DEFENSE FUND food assistance after the first fifteen (15) calendar days of a strike will be available.

Except for necessary food assistance, Defense Fund money for direct assistance of an individual will be available after 30 calendar days of a strike. Applications will be available at Local Headquarters on or about April 30. Brooklyn and Bronx locations are planned.

Your Steward will be kept informed in up-to-the-minute releases. Keep in touch with your steward. The Local tape number is CI-7-2121, and your Community Services Committee number is 581-6558.

[PLAINTIFFS' EXHIBIT 317]

RHODE ISLAND PUBLIC EXPENDITURE COUNCIL

THE PAYMENT OF
UNEMPLOYMENT COMPENSATION BENEFITS
IN LABOR DISPUTES—

IMPACT ON INDUSTRIAL
DEVELOPMENT IN RHODE ISLAND

JULY 1972

PROJECT RHODE ISLAND

• • • • •

[14] The Viewpoint of Organized Labor: A Statement by Edwin C. Brown, Secretary-Treasurer, Rhode Island AFL-CIO

For several years it was the opinion of some businessmen in Rhode Island that if the community rating system for taxing employers paying into the employment security fund was changed to a so-called merit rating system the economic climate of Rhode Island would, like magic, boom and prosper. That business would have an incentive to stabilize employment and save tax dollars for business expansion.

With a "merit rating system" out of state employers would be encouraged to locate in Rhode Island and existing companies would have an incentive to expand. The same arguments were made concerning dual payments under T.D.I. and workmen's compensation.

We later found that these optimistic projections of business was a myth. The Rhode Island business community has not been able to overcome the fact that Rhode Island has some basic inherent weaknesses that every realistic survey and study has revealed.

Leadership in Rhode Island has failed to face the realities of the facts. Rhode Island has some fundamental shortcomings that demand alternative solutions if the sagging economy is to be made prosperous. Rhode Island is off the beaten track of commerce. Our freight rates are high, utility rates are high, cost of government is high, and we have very, very few natural resources we can depend upon.

In addition, we are vulnerable to goods manufactured overseas. Our textile and garment industry is confronted with stiff foreign competition. Synthetic fibers, technological [15] changes, and antiquated plants have also played an important part in the decline of Rhode Island textile industry. Other Rhode Island industries that are vulnerable to imports are the machine tool industry, jewelry, stainless steel flatwear, lace and other industries that depend upon manual labor rather than machinery.

This short background brings us to the subject at hand—paying unemployment benefits to those who are unemployed because of a strike. Here again a very emotional argument can be developed about the unfairness of such a provision.

However, if workers could believe the cries of business that unemployment benefits are a major factor in retarding Rhode Island's economic growth, union members and their officers would join with management and seek immediate remedy. Union representatives concede that the arguments presented by management have a degree of validity, but labor believes that the issue is more or less a paper tiger. Labor believes that if that issue is the real factor in holding the economic growth of Rhode Island back, Rhode Island is in a more difficult situation than most people realize.

If worker representatives would be expected to remove a feature of the Rhode Island law that is obnoxious to some Rhode Island businessmen so that the law would conform with the laws of most other states, it is reasonable to assume that these same businessmen would be willing to accept some of the more liberal features of the laws that exist in these other states.

For example, are these employers willing to forego the one week waiting period? Would they be willing to raise the amount of benefits paid? If the law is changed in one place to tighten up, it is proper it should be made liberal in other [16] areas where the Rhode Island law is out of line with those of other states. It would *not* be a simple matter of merely repealing that section of the law that provides for payment of benefits. Union representatives should not be expected to accept any changes that would leave them vulnerable to the capricious action on the part of an employer who would precipitate a situation that would force workers to withdraw their services. There are many situations when a "strike" may well be "just cause" and unemployment benefits should be paid. Are employers and workers

willing to have the Department of Employment Security or some other government agency determine who is the cause of a work stoppage?

Then there is the matter of the person who, because of fear, or because of his belief, refuses to cross a picket line. A determination must be made as to how these and other situations will be handled.

Employers express the desire that government should play a neutral role in a labor dispute. That unemployment benefits should not be paid after the penalty period has been served. That welfare assistance should not be available when the family runs out of funds. On the other hand, should government deny public services to an employer during the course of a work stoppage?

There is no question that the strike benefit feature has a psychological impact on the collective bargaining process. However, it is only one of the factors that management and labor must take into consideration when considering the total ramifications of a strike.

During the past few years, Rhode Island industry has experienced more than its usual number of work stoppages. Some of these strikes have been of longer duration than [17] usual. The reason we have experienced so many work stoppages is that Rhode Island workers are trying to "catch up" economically with their brothers and sisters in neighboring states.

Since 1968, there has been a national recession that has caused great problems for Rhode Island manufacturing industries. Because Rhode Island is the last to rise economically and the first to feel the impact of a recession, our industry and workers suffer greatly. Rhode Island

workers know that national profits had been high, that generous wage rates and fringe benefits were negotiated elsewhere and they are convinced that they work just as hard, just as long, and the cost of living is as high or higher than their brother elsewhere. They want working conditions comparable to other workers.

In conclusion worker representatives in Rhode Island are ready to work with the business community in improving the Rhode Island economic foundation if they can be convinced that industrial leadership in Rhode Island is sincerely interested in changing the patterns of the past and taking meaningful action to diversify the feeble economic structure that now exists rather than merely nibble away at the social laws placed on the books years and years ago.

[18] The Viewpoint of Rhode Island Employers: A Summary of Attitudes Derived from a Preliminary Survey of Industrial Managers

This summary of management attitudes and opinions must begin with a clear cautionary statement: due to the time limitations of this phase of Project Rhode Island, only a small sample of Rhode Island business management was interviewed. This points out the essential difference between organized labor and an unorganized business community: the ability of labor to deliver a coherent statement of policy differs markedly from the inability of industrial management to deliver a similar comprehensive statement.

To produce a management position statement to reflect accurately a consensus of management opinion, an earlier study was reviewed and similar methods used. A set of questions derived from a Weekapaug Group survey was used as the basis for a set of interviews with managers

of a small sample[11] of major businesses. A more representative sample for a larger survey is now being planned; the results of this extended study, when available, will be used to modify this statement.

In discussing these issues with industrial managers, it was found that a consensus surrounded the following positions:

1. *Availability of Unemployment Insurance benefits during a labor dispute weakens management's position in labor relations.*

A consensus on this issue stressed the lack of state government neutrality during strikes. The economics of labor's position in relation to management was frequently cited as [19] a "war of attrition" during which both sides suffer economic losses. The point made clear by managers was the alliance of government and labor on one side of a labor dispute against industry as essentially destructive of the neutral role that government should play. Additionally, some managers felt that availability of benefits during strikes tended to make industry settle prior to the end of the six-week penalty period, for experience had demonstrated a lack of incentive for workers to settle disputes while collecting unemployment benefits. In this sense, benefits to workers on strike tended to prolong strikes.

2. *Unions should be called on to rely on union resources during labor disputes, such as union "strike funds," rather than employer-financed Unemployment Compensation.*

The thrust of this response was a rejection of the principle of the financing of strikes through employer-financed

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Employment Security funds. Employers felt an essential absurdity in their position of paying workers from employer contributions to a fund which prolonged strikes, which caused losses in production and profits for those same employers.

3. *Labor laws put Rhode Island industry at a disadvantage in competing with employers in other states.*

Although not central to the issue of unemployment compensation benefits to workers during strikes, managers [20] strongly expressed the opinion that too many restraints were placed on industry by state agencies. The specific complaint most often mentioned was the administrative time consumed by filing requests for special permits from state and local government.

4. *Rhode Island Unemployment Compensation law places Rhode Island business at a distinct disadvantage in competition with employers in other states.*

A recurring theme in many interviews with businessmen about "business climate" was that it was nationally known that only two states, Rhode Island and New York, make unemployment benefits available to striking workers. This in the view of the business community surveyed creates an unfavorable image for the state. Several managers cited examples of industries that had definite policy against locating plants in a state that offered benefits during strikes. The variation in laws on unemployment benefits between states gave some states a clear advantage for maintaining existing industry and recruiting new industries. Since this is the case, the managers point out, then economic development in Rhode Island will lag until laws in Rhode Island match laws in other states in this regard.

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[PLAINTIFFS' EXHIBIT 321; Strike Preparation Manual, American Society for Personnel Administration, 1974; pages 1-2, 6-9, 15-16]

strike preparation manual

No two strikes are identical.

The American Society for Personnel Administration's Strike Preparation Manual is a management *guide* and it is not intended, nor claimed, to cover all circumstances or incidents which may or may not occur before, during or after an actual labor dispute.

It is intended as a thought-provoking instrument which will assist in prompting protective measures and an awareness of problems which may confront the struck, or about to be struck, company.

Chapter		Page
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II	Negotiations	5
III	Preparation for a probable strike	8
IV	Strike	14
V	Strike settlement	19
VI	Resuming work	21

c) Can you anticipate the severity of the union's demands?

d) What percentage of your employees might "go out?"

e) Does the union pay strike benefits? If so, how much and when do payments begin?

f) Are strikers eligible for state unemployment compensation, food stamps, welfare?

g) If applicable, would other unions respect your union's picket line?

B. Second stage strike preparations during final weeks of bargaining.

1. *Urgent* questions which must be answered by the company about the company:

   a) Does the negotiations committee have true authority?

   b) Does your management honestly believe its position is morally right?

   c) When is it the right time to communicate your position to all employees?

   d) Is the company really prepared to hold out when it begins to hurt?

   e) Will you continue to operate during a strike and with what personnel?

   f) What is the priority sequence for scheduling production during a strike situation?

   g) What are the company's chances of winning?

2. *Urgent* questions which the company must answer about the union:

   a) What do you think the union is really after?

   b) What promises has the union made to rank and file?

   c) Do union negotiators/representatives control the membership or does the membership control the negotiators?

   d) What is the strength of the union to take a strike and for how long a period?

e) How big is the union's "war chest"?

f) How long can employees be expected to hold out in spite of installment payments, rent, living expenses, etc.?

g) Many labor leaders concede that sometimes a strike is a much needed catharsis. A strike is sometimes called for purposes other than the reason announced relative to a particular issue. Therefore, it is well to realize that a strike may be the result of unrest within the labor organization; a proving ground for union leadership; a sharing of hardship which may help weld the union organization; a high-level confrontation precipitated by inadequate means of problem resolution at lesser levels of the organizations. Are these, or similar causes, possible factors of consideration for your "probable strike?"

preparation for a probable strike

A. Preparatory departmental assignments and responsibilities.

1. Industrial relations

a) Coordinate with *all* departments and appropriate company officials to insure their awareness of the contract expiration date, general status of current negotiations and pre-strike assignments and responsibilites.

b) Again review stability and strike history of union.

c) Develop confidential master schedule for layoff of non-striking personnel where no production work is available.

d) Prepare a final plan for the approval of top management on the feasibility of, and plans for, operating the plant during a strike.

e) Coordinate appropriate arrangements for the transfer of work to other plants or divisions when required.

f) Coordinate initial plans for an orderly shut-down of operations and plant supporting facilities. This plan will be utilized subsequent to or coincidental with a strike, and subsequent to the time it may be determined that the plant will not be producing.

g) Consider establishing in-plant printing and mailing services and be sure they are adequately supplied. Insure that a primary or alternate printing and mailing service is available outside the plant.

h) Maintain an up-to-date list of all employees by name and address, categorized as follows: all hourly-rated employees, all non-exempt employees, all exempt employees.

i) Update list of all officers, stewards and members of the local union organization. This list should include

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addresses, telephone numbers and pictures, if possible.

j) Maintain a list of appropriate union officials, business agents, regional directors, etc., together with their addresses and telephone numbers.

k) Prepare two sets of mailing envelopes pre-addressed to all employees, and separated as in (h) above.

l) Maintain a list of the officials in the community and county, particularly the Chief of Police, Sheriff's Office, City Attorney, etc. In the event of a strike, these individuals must be contacted and made aware of the situation and, when appropriate, the company's position.

m) Establish and maintain appropriate contact with governmental agencies — Federal Mediation and Conciliation Service and State Mediation Service.

n) Provide instruction to foremen and related supervisory personnel in regard to their responsibilities and conduct during the strike.

o) Prepare to contact State Unemployment Benefits Agency to prevent payment of benefit claims by strikers, if state law bars benefits to strikers.

p) Establish a management team of observers to man each entrance to the plant where picket lines may be established. Observers should be instructed to record all incidents, listing date, time, names, etc. Provide tape recorders.

q) Arrange for and have available the services of management personnel to act as photographers, preferably individuals who have had experience in strike situations. However, photographers acting for the company must be instructed not to take pictures of peaceful picketing or other peaceful activities. To do so may constitute an unfair labor practice charge and convert the strike to an unfair labor practice strike. Thus, picture-taking must be confined to the pictorial recording of incidents of mass picketing, violence or other unlawful acts.

r) Have available a sketch of the facility, indicating all entrances and exits, fence lines, window locations and building locations with dimensions drawn to scale.

s) Insure that management has selected one company representative to handle communications and act as sole spokesman with the media and inquiring

Plaintiffs' Exhibit 321

II. Pay and benefits

a) Immediately arrange to pay strikers any *wages* which they are due.

b) Discontinue the payment of fringe benefits, specifically insurance and pension premiums, providing the previous contract does not prohibit same and it is done on a non-discriminatory basis.

c) Do not pay vacation pay.

d) Notify the local employment service office in writing that a strike has occurred and indicate the name and address of each striking employee.

e) Review the files of employees currently drawing accident and sickness benefits, paying particular attention to the "expected" date of return to work for each employee so involved. Payments should cease on the "expected" date unless additional medical statements verify a continuing disability.

III. Communications

a) Advise all appropriate agencies and offices of the strike.

b) Advise all employees via a husband-wife home-addressed letter as to the company's position during negotiations, industry competitive position, cost of the union's demands, factual outline of the company's final position and the cost of its final offer.

c) Encourage the employees to return to work.

d) Inform all employees of their rights during a strike.

e) Review and approve for release by your designated "media man" all public and employee communications.

IV. The law

a) Know how to correctly replace or terminate strikers under state and federal law.

b) Know what the reinstatement rights and requirements are of replaced strikers.

c) Over-extend yourself to insure all individuals receive fair and equal treatment.

d) Be alert for and knowledgeable of actions by strikers which may constitute unprotected union activities.

e) Be keenly aware of conditions or actions by the

Plaintiffs' Exhibit 321

company which could lead to unfair labor practice charges against the company and possibly convert the strike from an economic strike to an unfair labor practice strike.

f) Know the "rights" of strikers (see Chapter I.)

V. Verification

Maintain your Strike Log as accurately as possible (by day, by hour) and in a confidential manner for possible future legal actions. Pictures taken or recordings made of unprotected activities or incidents are to be referenced to the log.

VI. Conduct

Communicate, observe, and enforce (by law agencies if necessary) the following:

a) People working in or having any business with the company have a right to pass freely in and out of the plant.

b) Pickets must not block a door, passageway, driveway, crosswalk or other entrance or exit to a struck plant.

c) Profanity on streets and sidewalks is a violation of the law.

d) Company officials, with the assistance of local law enforcement agents, should make every effort to permit individuals and vehicles to move in and out of the plant in a normal manner.

e) Union officials or pickets have a right to talk to people going in or out of a struck plant Intimidation, threats and coercion are not permitted, either by verbal remarks or physical action.

f) Sound truck should not be permitted to be unduly noisy — it should have a permit and must be kept moving.

g) If acts of violence or trespassing occur on company premises, plant officials should file complaints or seek injunctions. In cases of violence on one's person, the aggrieved person should sign a warrant for the arrest of the person or persons causing such violence.

h) Fighting, assault, battery, violence, threats, or intimidation are not permissible under the law, nor is the carrying of knives, firearms, clubs or other dangerous weapons.

VII. DO NOT:

[Plaintiffs' Exhibit 322]

LOCAL UNION NO. 77

International Brotherhood of Electrical Workers

Office Address
1718 Melrose Avenue
Seattle, Washington 98122

Mailing Address
Box 1309, Capitol Hill Sta.
Seattle, Washington 98112
323-4505

May 31, 1974

To: *All members of Local 77 IBEW employed at Puget Sound Power & Light Co.*

• • • • •

The payment of unemployment compensation, as you probably know by now, has been turned down. It is *very important,* however, that you keep reporting to the unemployment agency as we are appealing that decision.

A good example is that of the Shell Oil Refineries strike. [2] Those people on strike had applied for unemployment compensation and were turned down. That decision was appealed by their Union and it was finally decided that they would in fact receive their unemployment compensation, *but only those who kept reporting.* Those who didn't report lost out. Again, we urge you to keep reporting to your local unemployment office.

Plaintiffs' Exhibit 322

Food stamps are being obtained by some members and we urge you to apply for them right away if you have not already done so. You have paid into the fund for food stamps and now that you need them it is only fair that you receive benefits from it.

• • • • •

Respectfully and Fraternally submitted,

/s/ ROBERT P. TAYLOR

Robert P. Taylor
Assistant Business Manager
Local 77, IBEW

RPT/lr
opeiu#8afl-cio

[PLAINTIFFS' EXHIBIT 325]

Legislative Document (1960) No. 32

STATE OF NEW YORK

REPORT

OF THE

NEW YORK STATE

JOINT LEGISLATIVE COMMITTEE ON

INDUSTRIAL AND LABOR CONDITIONS

For the Year 1959–1960

Unemployment Insurance Law. Under this amendment, the same progressive schedule of tax rates (increasing 15/100 of 1% per year) which the Federal government would start to impose on New York employers in 1964 to recover its money if no repayment were made would be applied under New York law starting in 1960 and running through September 1963. However, no employer would be taxed an amount in excess of the TUC benefits his employees received plus the administrative costs allocable thereto.

Supporting Statement on Proposed Amendment

Repeal of Filing Fee for Employer Appeals

The required $10 deposit which an employer must pay for an appeal to the referee and $25 for appeal to the appeal board discourages bona fide appeals—particularly on the part of small employers. The cost of preparing the case and attending the hearing is in itself a deterrent to a specious appeal; and the posting of an additional deposit is unjust and discriminatory. There are so few appeals by employers in New York—in absolute numbers and, even more strikingly, in comparison to the number of claimant appeals, that it is obvious that many erroneous decisions must be going unchallenged. New York and Rhode Island are the only two states where employers are required to pay a deposit to exercise their legal rights. This requirement is unjust, discriminatory and harmful to the unemployment insurance program; and it should be repealed.

Statement of Joseph Molony, on Behalf of the United Steelworkers of America

I think I should preface my few remarks by saying that I and my union support the position taken by Mr. Corbett of the State AFL-CIO, and I come to New York with some of my colleagues this morning deeply concerned with what I hear and with what I read in newspapers regarding the future of our social legislation in the State of New York. I listened attentively to Mr. Williams earlier and there he made reference to the fact that a great number of steelworkers, whose strike has been interrupted through great sums of money from the Unemployment Insurance Fund. We of the Steelworkers are also deeply concerned with what we read regarding the utterances of the Commissioner of Labor, former Dean of Cornell, Mr. Catherwood. Here some months ago he was over in the City of Buffalo visiting us there and talking with a reporter for the morning newspaper, he announced the admonition, giving the most careful attention and study to the Unemployment Insurance Law as is related to strikers, to expectant mothers and to retirees. He said that he was studying this very carefully and it occurred to me and to many others that his study might not be made with the thought in mind of improving the benefits to these

three categories of people but rather that they might be denied benefits which they now enjoy.

I would like the record to show that in choosing unemployed people unemployed by reason of a strike, choosing expectant mothers, and pointing to elderly people on pension, that the distinguished Commissioner of Labor certainly was not choosing very formidable opponents. He might well address himself to other parts of the legislation or other groups having connection with industrial plants. He too prefaced his remarks that the Unemployment Insurance Law should be revised and tightened, I believe his word was, and the same kind of treatment should be accorded to the Workmen's Compensation Law and other parts of our social legislation because in his opinion and in the opinion of the administration and a great number of people it was felt that the climate of our state is not good for industry. Well, there are two sides to that coin. It seems to me of equal importance that our legislators should keep in mind that the State of New York should be made and kept a good place not alone to establish industry and to conduct industry but also a good place in which to work. I happen to be a representative of the United Steelworkers of America. We engaged ourselves in a great strike nationwide some months ago. The strike I assure you, and I don't think you want me to debate the merits of the steel strike here because I don't have the time or perhaps the patience at this time, but the strike in our opinion at least was forced on the union. But that be as it may, the members of our union in our judgment were forced on strike because of the onslaught of the steel masters on our working rules and the members of our union suffered great hardship for almost two months until such time as they were able to draw their benefits from the Unemployment Insurance Fund.

Now it has been proposed by representatives of the administration and again by Mr. Williams representing a segment of industry in the State that strikers be barred from receiving unemployment insurance. It's conceivable that to do so might lessen the burden of taxation on the employer, although I rather question that. I am not armed with too many figures but my best guess is that the unemployment insurance payment to the steelworkers for the entire period of our strike, at lease the compensable period, did not exceed $11 million and contrasted with that was the payment of $500 million during the period of recession in 1958. So even if strikers were barred from receiving unemployment insurance I am not too sure that the impact would be too great on the taxes which employers presently pay. New York State is happy that it has a solvent fund unlike many other states and to keep it solvent the taxation would have to remain at about the present level. In the event, however, that the State Legislature in its wisdom but not in its charity should remove benefits from striking employees or for that matter any employee involved in an industrial controversy which includes a lockout by his employer, if he were denied these benefits then it is not to be unexpected if such people might easily

become public charges because the average working man in our State is unable to accumulate sufficient savings to carry him for any extended period of either layoff, lockout or strike. So, it is conceivable that he might become a public charge. Then we would have the extraordinary situation that the employer might also conceivably be relieved of some taxation but the people of the entire State would then be subject to taxation to assist these people who were in distress as a result of lockout or strike.

So I'm here to express to you and to your distinguished colleagues the feelings of the membership of my union, and the feelings I do believe as expressed by Mr. Corbett of all of labor that we are unalterably opposed to denying a striker unemployment insurance.

I am not primarily here as a champion of expectant mothers or old people but from my understanding of the law, which is not too broad, these expectant mothers who do receive unemployment insurance must meet certain and rather vigorous requirements by the unemployment insurance offices. The same applies to retirees and my understanding of the law is that it must be involuntary retirement before they are eligible. The savings to the great State of New York do not justify an onslaught on these good people. I think that the Unemployment Insurance Law which was passed in 1935 and which I believe became effective in January of 1938 was enacted into law by kindly people in a spirit of goodliness and charity. It should be administered in the same kind of a benevolent spirit. It should not be used in an effort, and it should not be changed in an effort, to attract industry to our great State.

I am well aware that there are many states in the union which pay less who have laws not near as liberal as ours but with the passage of years, New York State no longer commands the proud position which it once held of being the most liberal, the most forward thinking of all states in the union. In relation to workmen's compensation, I believe we are at the bottom of all industrial states and there are many states—Michigan, California—which pay far more liberal benefits than does our State. It is true that we can and do meet competition from certain others states who have very meager benefits but for us to adjust ourselves to these states and to these kind of people, the kind of legislatures who pass such laws, to me is not true competition, rather it is competition in degradation. Rather it is for organized labor across the land to bring those states which have inadequate social laws to our level and it is our job in the State of New York to at least keep pace with states such as Michigan and California.

Now I pray and plead with you gentlemen that when you go to Albany in January, you give consideration and that you listen to the cries of the steelworkers. We have completed 116 days of strike. We are presently working under an injunction. I pray that we do not have to renew our strike in order to preserve our position next January, January 26th. If unfortunately and tragically we must renew the strike by the vote of the people involved, that is how it's going to be done. Then it would be a disaster.

It would be an unkind thrust. It would be damaging beyond description to the Steelworkers Union if the State Legislature changed the law in the midst of this great strike and denied our membership the right to unemployment insurance. I beg that you consider that as you consider the many proposals which must be before you having to do with unemployment insurance, consider the welfare and well being of approximately 38,000 citizens of our State.

We receive supplemental unemployment benefits in conjunction with the receipt of unemployment insurance but, S.U.B., as we call it, is specifically barred in the event of strikes.

I do not know whether this has been stressed or not by representatives of labor but this Unemployment Insurance Law of ours not alone gives a lift to the man who is out of work but also is of great value to our commerce and our industry as a whole in the State of New York and if you tie that in with the supplemental unemployment benefits which our union has been able to negotiate with the steel companies it amounts to, in payments, to approximately 65% of a man's earnings; that means that the average steelworker will be receiving approximately $65 to $70 a week during the periods of involuntary layoff which he pours back into our economy and which keeps small business people and professional people going. So, it has that added benefit, as you well know.

[PLAINTIFFS' EXHIBIT 328; Transcript of 1974 Recorded Telephone Message; Rochester]

Monday, December 16, 1974—5:00 P.M.

Local 1170 is now distributing turkeys (20-22 pounders) for all its members of Local 1170. Also if the members prefer ham, at a minimum cost of $2.00 (8-10 pounders), hams are available. All members must go to the Crisis Center to obtain the authorization card to receive this Christmas Day dinner. The Company might want to spoil our Christmas, but the members of Local 1170, C.W.A., will march ten feet tall right through the holiday season and into unemployment insurance. The Company is misleading the membership of Local 1170, C.W.A. The employees of the Plant Department are reasonable people but the Company thinks that we are stupid while we are fighting for our justice. Just our fair share. After all it was the Plant Department that makes the profit for the Company, the Company wants it all. We must have our fair share.

This is Local 1170, C.W.A. thanking you for calling the tape, the place we tell the truth. Don't forget the Christmas Party December 21, 1:00 P.M. here at center.

[PLAINTIFFS' EXHIBIT 331; Transcript of 1974 Recorded Telephone Message; Rochester]

Tape Release Monday, December 30, 1974

All members who have not received their $50 Christmas bonus will have until 12 noon December 31st to receive it. This is under instruction of the National Union. The National Union has ordered that Local 1170, CWA, circulate petitions to the citizens of Rochester and the suburban areas requesting that the Public Service Commission of the State of New York hold up the Company's temporary rate increase until the strike is settled. All members and their families are urged to fill out and sign these petitions and return them to the Union Office.

Arrangements are being made with the State of New York Unemployment Bureau to start signing up for unemployment insurance, which as of today is 11 days away. As soon as we have the system established all members will receive the official word on this tape.

This is Local 1170, CWA, the place where we're still telling the truth.

[PLAINTIFFS' EXHIBIT 332; Transcript of 1975 Recorded Telephone Message; Rochester]

Monday, January 6, 1975 3:50 P.M.

There will be a letter in the mail tomorrow Tuesday, January 7th to all members spelling out the procedures to be followed to apply for unemployment insurance. These rules and regulations have been established by the State of New York Unemployment Department and must be followed.

Plaintiffs' Exhibit 333

To all members in Monroe County, Wednesday, January 15, 1975 is sign up day at the Crisis Center. To all other members, the addresses and times for sign up in your respective counties will be spelled out in the letter. Be sure to read the letter and follow the instructions. The Company continues its strike breaking activity. The Company is now contracting out all repairs of Electronic Secretaries to a local firm. Do you know the Company's other Union, Local 320 of the IBEW in Sylvan Lake, which the Rochester Telephone bargained with in April 1974 requires that all employees will receive two weeks vacation between July 1st and September 5th. The Company will not grant that to Local 1170, C.W.A. Please let's fill out those petitions and get them in.

This is your Local 1170, C.W.A. thanking you for calling the tape, the place where we are still telling the truth.

[PLAINTIFFS' EXHIBIT 333; Transcript of 1975 Recorded Telephone Message; Rochester]

Monday, January 13, 1975

All people represented by Local 1170, C.W.A. living in Monroe County must report to the Crisis Center on Wednesday, January 15, 1975 to sign up for unemployment insurance according to the schedule mailed to all members. If you have any questions, call the Union Office, 647-1170, that is 647-1170. The Crisis Center has a few food specials this week. Large eggs—70¢, potatoes, 50 pounds for $2.00, onions—25¢ a bag, other specials to follow The Company's foremen are now calling the strikers, asking them to come back to work. To date, everyone has told them to go to

Plaintiffs' Exhibit 334

hell. Remember—everytime you see a management person working, they are doing your work. If they did not do your work, the strike would be shortened.

This is your Local 1170, C.W.A. thanking you for calling the tape, the place where we are still telling the truth.

[PLAINTIFFS' EXHIBIT 334; Transcript of 1975 Recorded Telephone Message; Rochester]

Wednesday, January 15, 1975

The City Council of the City of Rochester last night passed a resolution urging the Public Service Commission of the State of New York to hold the Company's temporary rate increase up until the strike is settled. The Company is not giving 100% telephone service therefore why should the subscriber pay for it. The City of Rochester notified the Chairman of the Public Service Commission of this resolution. 945 members of Local 1170, C.W.A. living in Monroe County, today signed up for unemployment insurance benefits. Thank you Mr. Company for nothing.

All other members have signed up in the counties where they live. The members of Local 1170, C.W.A. would rather be working but the Company does not want that. Again, thank you Mr. Company for nothing. But let me tell you like it is—you are not going to starve us back to work, you must bargain with us an acceptable contract the majority of the membership will accept.

This is Local 1170, C.W.A. thanking you for calling the tape, the place where we are still telling the truth.

[PLAINTIFFS' EXHIBIT 337]

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

Telephone Local Union 1357
677 Ala Moana Blvd. Room 815
Honolulu, Hawaii 96313
Phone 531-0288

IBEW 1357 STRIKE NEWS BULLETIN

May 11, 1974

As we enter the second week of the strike, *there is every indication* that we are running a successful strike. *This means that we are operating at more than 90% of total strength on our picket lines* throughout the State. So far we have evidence that a few, happily *very few, of our members have become scabs and are crossing our picket lines.* We know who these people are even though the company attempted to shield them by transporting them to and from work in vans which had the windows covered with newspaper.

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We had hoped to give you some additional information on benefits today, but until the company answers certain questions for us we are at a loss as to what information to give you.

Our crews are hard at work gathering information and completing forms for unemployment compensation. *If you have not applied, contact your picket captain immediately*

Plaintiffs' Exhibit 337

and he or she will make arrangements for you to meet with one of our Union members assigned to processing unemployment compensation applications.

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[2] The State Federation of Labor, the two other IBEW locals, the ILWU, the Teamsters and many independent unions are supporting our strike, These organizations will not cross our picket lines, they'll picket with us and give us other supportive assistance.

Don't forget, do not listen to rumors. Be informed, but with factual information you receive from your shop steward, picket captain or the Union office.

Again, on behalf of the Executive Board, your cooperation is making this strike a success. Aloha and mahalo.

Sincerely and fraternally,

/s/ JOHN F. GUZMAN

John F. Guzman
Business Manager-
Financial Secretary

[PLAINTIFFS' EXHIBIT 339]

September 16, 1974

An Open Letter to our brothers and sisters working at Hawaiian Tel

WE HAVE A JOB TO FINISH!

Sisters and Brothers,

We have come out of a long, hard but spirited strike, during which we discovered each other and the power and strength of our unity.

During that strike we received the backing, support and encouragement of many workers, unions and community organizations which really boosted our morale and efforts.

We settled for what we could get, after two contract rejections, and came back to work. We elected new leadership which we hoped would get our union really together and make it strong and ready to defend our hard-won gains. We knew we had to be more prepared for the next round of struggle.

The Bosses Stab Us in the Back

But the ink was hardly dry on the contract when the G.T.&E. bosses showed us what they thought of the truce. They sent their fancy lawyers to federal court to sue the State to prevent payment to us of our unemployment compensation, which we were entitled to under State law. By our labor we earned the profits and paid the state taxes that finance the State Unemployment Fund. Now the company, with the help of the courts and their Big Business allies in

Plaintiffs' Exhibit 339

Hawaii and all over the U.S., is trying to rob us of our benefits, to the tune of hundreds of thousands of dollars, and trying to undermine our ability and right to strike in the future.

Can We Afford to Do Nothing?

Now we are receiving our wages and increases and some of us do not care much whether we get our unemployment or not. Some say even if we win this court case in Hawaii, the company will tie up our unemployment benefits for years, taking it all the way to the Supreme Court. That may be true, but if we win, the company will have to bear more of the court costs and will be on the defensive, not us. Some say it would be better to concentrate on taking away Aloha United Way contributions from the company's drive, and give individually or through the union. We are not against this idea, but feel we must not neglect the more important issue that faces us.

This Issue Affects All Workers

We must realize that all workers in Hawaii and in 25 other states will be hurt by a bad decision by Judge Pence. Don't we have a responsibility to carry our struggle through, now that the bosses have picked up the club to use against us and all workers, and beat back this attack and defend our right and ability to strike? Don't we have a responsibility to the many workers who supported us when we were on strike to make sure that our bosses' action in court doesn't cripple their own strikes in the future?

Plaintiffs' Exhibit 339

Don't Leave It to the Courts and Lawyers

Is it enough to leave this important issue up to the judge and a few lawyers, able though they might be, to argue in an empty courtroom?—when hundreds, thousands, even millions of our fellow workers will be affected by the decision!

We learned not too long ago what happens when we leave an important matter like strike demands to a so-called impartial mediator. He tried to undermine our strike and make us accept a lousy offer. We have learned to unite and fight; we know through united action we are stronger than the bosses and that working class solidarity is built. The big bosses are united—the phone company, the Employers' Council and the Chamber of Commerce are ganging up to try to teach us a lesson and hurt all workers. They represent the class that rules our society. We are the people that produce their wealth, all the while struggling for just enough to get by on. Well, we have had it up to here! It's time to unite with other workers who are under attack by these same class of bosses—dock workers, striking machinists whose jobs were stolen by military scabs, and all workers whose wages and conditions are being eaten away by inflation while the corporations get fat.

JOIN IN OUR RALLY THIS SEPTEMBER 23, 4 P.M. to 6 P.M.

In front of the FEDERAL COURT HOUSE on King Street and Richards Street.

Music, short speeches, and mass picketing.

Plaintiffs' Exhibit 342

This demonstration is endorsed by:

- Hawaii AFL-CIO Executive Board
- Carpenters' Union, AFL-CIO (Walter Kupau)
- Machinists' Union, AFL-CIO
- Ironworkers' Union, AFL-CIO
- Retail Clerks, AFL-CIO
- Oahu Division, ILWU (subject to local ratification)
- Labor-Community Alliance

Mahalo and solidarity,

Gwen Pascua
Chairperson
Workers Committee to Defend the Right to Strike
1565-A Moani Street, 96819 (841-0077)

[PLAINTIFFS' EXHIBIT 342]

NEW YORK STATE DEPARTMENT OF LABOR — DIVISION OF EMPLOYMENT

INTER-OFFICE MEMORANDUM

To: Mr. M. Rourke, Dist. Supt. U. I.
From: W. Lakey
Subject: Outside Speaking
Office LO 17, Newburgh
Date August 30, 1971

At the request of Mr. Ray Terwilliger and Mr. Al Bockemuhl of the Communications Workers I gave a group

Benefit Rights Interview to their members at the Carpenter's Hall on W. Parmentier Street, Newburgh on Sunday evening, August 29, 1971 at 8:00 P. M.

/s/ WALTER M. LAKEY
Walter M. Lakey, E. S. Manager

[PLAINTIFFS' EXHIBIT 345; pages 18-20]

LABOR RESEARCH REPORT
1973—No. 19
DECEMBER 1973

THE INDUSTRIAL CONTROVERSY PROVISION OF THE NEW YORK STATE UNEMPLOYMENT INSURANCE LAW
1935-1973

NEW YORK STATE DEPARTMENT OF LABOR
Division of Research and Statistics
State Office Building Campus
Albany, New York

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APPENDIX C

EFFECT OF WORK STOPPAGES ON THE BENEFIT COSTS OF UNEMPLOYMENT INSURANCE

Under the New York State Unemployment Insurance Law, persons unemployed because of a work stoppage in their establishment are not eligible for insurance benefits

until seven weeks have passed; there is, in addition, a one-week waiting period. Then, after the strike has lasted eight weeks, workers are eligible for benefits.[1]

About 9.8 percent of all work stoppages during the 26 years from 1947 to 1972 lasted longer than eight weeks. These stoppages involved 13.8 percent of all workers unemployed because of a strike in their establishment and 51.0 percent of mandays made idle. A total of 1,240 stoppages involving approximately 724,612 workers and 43,524,000 mandays idle fall into this category.

In an average year during this period, there were 47 such stoppages involving 27,900 workers, who were out an average of 12.0 weeks. Therefore, on the average, these workers were eligible to receive 4.0 weeks of benefits.

The maximum weekly benefit increased at intervals of two to five years, from $21 in 1947 to $75 in 1970. The average maximum weekly benefit over the 26 years works out to $44.80. Therefore, the total of benefits which could have been paid to those unemployed because of strikes in their establishments averaged $5.0 million a year in this period —27,900 workers receiving 4.0 weeks of benefits at $44.80 per week. This is approximately 1.4 percent of the $355 million in benefit costs during the average year of the period.

Data on unemployment compensation received by strikers in 1963, 1964, 1966, and 1967 show that their weekly bene-

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[1] Workers who previously established a benefit year do not have to serve the one-week waiting period. The strike data include both workers who are on strike and those in the establishment who are laid off because of the work stoppage. In states that have a prohibition against any benefits for strikers, this second group would be eligible; in New York both groups are subject to the seven-week disqualification.

fits amounted to 95.6 percent of the maximum. An *adjusted* average maximum weekly benefit, therefore, can be calculated at $42.83 for the 1947-1972 period (95.6 percent of $44.80).

But not all workers unemployed because of strikes in their establishments remain without jobs for the eight weeks and not all receive maximum benefits. Some take on jobs in other areas or other fields, and some do not file. An estimated 5 percent of unemployment insurance claimants drop out of the claimant category each week. Therefore, during eight weeks almost 34 percent[1] would not have appeared for benefits. On this basis, it may be assumed that only about 66 percent of those involved in work stoppages receive benefits.

The assumption of a 5 percent weekly dropout rate applies to the "average" situation. Experience in individual strike situations may vary a great deal, being affected by the availability of other jobs and the individual's need for seeking or accepting them, the availability and amount of union strike benefits, the industries in which the strike occurs, and other factors. Thus, construction workers on strike during their busy season may have little difficulty in finding jobs in other communities.

For example, during 1963, 1964, 1966, and 1967—years for which data are available—only 48.4 percent of the 71,300 persons involved in strikes that lasted more than eight weeks came in for benefits—a weekly dropout rate of about 8.5 percent. On the other hand, weekly dropout rates of

[1] This number is less than 40 percent (8x5) because the 5 percent dropout rate each week is figured on a progressively smaller base.

2.5 percent and 4 percent were reported in two recent large strikes in manufacturing firms.

Obviously, some adjustment has to be made for these factors in calculating actual benefits; and since annual data during the period are not available, adjustments in the accompanying table assume a 5 percent weekly dropout rate, and benefits of 95.6 percent of maximum levels.

On the basis of these assumptions, the estimate of benefits received by strikers is calculated at 63.4 percent of the maximum levels (95.6 percent of 66 percent).

ESTIMATED EFFECT OF WORK STOPPAGES ON THE BENEFIT COSTS OF UNEMPLOYMENT INSURANCE (h)

Estimation step	Average 1947-72	Average 1947-57	Average 1958-72	Average 1963-72	1970	1971	1972 (i)
(1) Number of all reported stoppages per year	481	521	451	451	570	399	522
(2) Number of workers involved in such stoppages	202,000	175,300	222,000	233,000	372,000	253,000	139,000
(3) Number of stoppages per year lasting more than 8 weeks	47	52	43	41	55	57	45
(4) Number of workers involved in such stoppages	27,900	23,500	28,900	25,300	62,446	15,886	66,726
(5) Average duration (weeks)	12.0	11.6	13.2	15.5	10.2	16.5	21.9
(6) Average number of weeks of benefits received	4.0	3.6	5.2	7.5	2.2	8.5	13.9
(7) Average maximum benefit (per weeks) (a)	44.80	29.23	56.22	62	75	75	75
(8) Total maximum benefits per year (millions) (b)	5.0	2.5	8.4	11.8	10.3	10.1	69.6
(9) Percent of all benefits (c)	1.4	1.1	1.9	2.6	2.0	1.3	9.5
(10) Adjusted number of workers involved (d)	18,800	15,580	19,750	17,650	41,400	10,532	53,029
(11) Adjusted average benefit per week (e)	42.83	27.94	53.75	59.27	71.20	71.20	71.20
(12) Estimated benefits per year (millions) to persons affected by work stoppages (f)	3.2	1.6	5.5	7.8	6.5	6.4	52.5
(13) Percent of all benefits (g)	0.9	0.7	1.2	1.7	1.3	0.8	7.2

a. The average of the maximum weekly benefits paid during the period. Where the maximum changed during the year, an average was computed: for example, in 1970 the maximum was $65 during the first 8 months and $75 in the last 4 months; the average for the year was $68.33.

b. Item (8) equals the product of items (4), (6), and (7).

c. Item (9) equals item (8) divided by total benefit payments.

d. Assuming that 5 percent of those involved in work stoppages will find other jobs each week; hence, after 8 weeks, only 66.3 percent will come in for benefits.

e. Benefits paid to strikers in 1963, 1964; 1966, and 1967, were 95.6 percent of maximum benefits in those years. (it is assumed that this relationship held in all years.)

f. Item (12) equals the product of items (6), (10), and (11).

g. Item (13) equals item (12) divided by total benefit payments.

h. The data are for work stoppages ending during each of the specified years. On this basis, for example all of the time lost in the strike against the New York Telephone Company, which ended in February 1972, was included in the 1972 data even though the strike began in July 1971; on the other hand, the elevator constructors strike, which began in July 1972, was excluded because it did not end until January 1973.

i. Data available for the Telephone Company stoppage, indicated that more than 66.3 percent (footnote (d)) of these workers came in for benefits. About 9,000 workers were added to line 10 to reflect this fact and data for the averages were adjusted accordingly.

[PLAINTIFFS' EXHIBIT 353; Article from UAW AMMUNITION, Official Publication of UAW's Education Department, June 1957]

[9] INDUSTRIAL UNIONS ADAPT TO THE AGE OF AUTOMATION

How UAW industrial union principles have evolved to meet the great challenges posed by employer opposition the development of technology, and the appearance of automation.

PART TWO OF
HEART OF THE UNION
A Core Study Program

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The two UAW films, "Building the Auto Workers' Union" and "United Action" are different versions of the same event—the 1939 General Motors tool and die strike.

When GM and Chrysler were organized as the result of the sitdown strikes, the job was not done once and for all. The companies tried every strategy to break the union.

Ford, next on the list, with Harry Bennett in charge of a private secret police and an army of gangsters and thugs, also fished around in the backwaters of the UAW.

Some of the leaders of the new union, who had no union background, were personally ambitious, and easily misled.

Secret Deal

Among these was Homer Martin, first president of the union, who sought to establish a personal rule over the union, and in fighting to achieve dominance attempted to

make a secret deal with the Ford Motor Company and Harry Bennett.

A civil war ensued which the democratic leaders of the union finally won at the 1938 convention of the union in Cleveland.

Here a new president was elected, and a democratic safeguard put into the union constitution, the corporation councils through which the rank and file in each company control their relations with the companies they work for.

But the civil war in the union did not leave the UAW in complete control of bargaining.

Homer Martin, using his prestige as a former union president, left the UAW and led a number of local unions back to the AFL.

Seizing this opportunity, the General Motors Company refused to bargain with the UAW saying that it could not be sure which union faction represented the workers.

From October, 1938 to June, 1939 GM refused to negotiate with the UAW at all.

The union at the time, however, was weak, divided, and its members balanced on the edge of privation by long years of irregular employment and alternating recessions and depressions.

In this situation, the union's leadership decided to take advantage of the unemployment compensation law and called the tool and die workers out on strike alone.

Then under the law, production workers, who got laid off as the result of the shut downs which would certainly follow, would be entitled to unemployment compensation.

[10] This was planned to exert pressure on GM, since it would be caught tooling up for a new model. The production workers, it was foreseen, would be relatively cushioned by unemployment compensation payments.

Thus, a double set of facts made the strike strategy effective.

The unemployment compensation law then (since, the law has been amended so the situation does not apply) allowed workers in a plant on strike to collect unemployment compensation, if they were not parties to the dispute.

Secondly, the skilled workers were urgently needed by GM and were thus able to apply powerful economic arguments on the company.

Production workers at the time were either laid off, or about to be laid off, and without bargaining power at all.

Thus, the skilled workers were able to use bargaining power to help production workers who were without any bargaining power at the time.

Many people, it should be noted, think that situations like this will recur in the future, now that the auto industry is getting back to a feast-famine cycle (with the feasts very short indeed).

Phony Strike

The Homer Martin AFL rump faction got wind of the strategy and tried to disrupt it by calling a strike of all workers in advance of the walkout.

UAW leaders asked the people to maintain union discipline and stay on their jobs until they had made their own decision.

The phony Martin strike failed, and in a few days was called off by Martin and his AFL faction.

One month later in July, after GM had continued to disregard all efforts by the union to bargain, the skilled workers, under UAW leadership, left their jobs at GM Tool and Die in Detroit.

They were soon followed by other GM skilled workers throughout the country.

As the strike began to bite, GM started to close down all over the country. The laid off production workers then collected their compensation. At the same time they thronged to picket lines to support the skilled workers' strike.

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[PLAINTIFFS' EXHIBIT 356; Transcript of 1974 Recorded Telephone Message; Rochester]

December 19, 1974—3:50 P.M.

The meeting in Albany through the Mediator in separate rooms between the Union and the Company. After the Union modified its position, the Company's position still remains the same. The Company will not move one inch. No further meetings have been scheduled. Plans will be made for the Christmas bonus of $50.00 from the National Union. Remember—as a Union member on strike you are entitled to a turkey or ham for Christmas. Go to the Crisis Center and sign up. Christmas is less than a week away. If you need toys or gifts for Christmas, go get them at the

Crisis Center. Our Christmas Party is two days away. See you at the Riveria Theater on Saturday, December 21 at 1:00 P.M.

This is your Local 1170, C.W.A. thanking you for calling.

[PLAINTIFFS' EXHIBIT 358; Transcript of 1975 Recorded Telephone Message; Rochester]

Monday, May 12, 1975

For the past 23 weeks, 1500 members of the Communications Workers of America have been on strike against the Rochester Telephone Corporation. There has been a complete break down in negotiations and it looks as though the strike will continue for many weeks. Thousands of Rochester Telephone subscribers have been receiving less than full telephone service. In order to bring them all out, a resolution of this conflict, the Assembly's speedy committee on labor will hold a public hearing in Rochester at 10:00 A.M. on Saturday, May 24 at Monroe Community College, 1000 East Henrietta Road, Rochester to offer all parties concerned an opportunity to voice their concerns over the long strike. It is my feelings that the Assembly's standing committee on labor can serve the Rochester community in offering all parties an opportunity to public air their views on the strike. The strike becomes important when we realize that 1500 workers of the Rochester Telephone Company are capturing the public treasury in a time when more than 760,000 people are unemployed.

[PLAINTIFFS' EXHIBIT 366]

For release:
Morning papers, Tuesday,
June 15, 1971

FEDERAL MEDIATION AND
CONCILIATION SERVICE

"The Changing Nature of Strikes"

J. Curtis Counts, Director
Federal Mediation and Conciliation Service

NATIONAL ASSOCIATION OF MANUFACTURERS
Institute on Industrial Relations

Grand Teton National Park, Wyoming
o O o
June 14, 1971

• • • • •

[5] While it is clear that historically strikes take their characteristics and meaning from the total social, economic, and political environment in which they occur, there are four categories of factors which I believe contribute significantly to their changing nature.

[6] One of these I choose to call external factors—external in the sense that these influences stem from or are developed outside the specific contractual interest and control of the parties. This category embraces such things as the state of the economy, the pressures of today's inflation during a period of increased unemployment, the pattern of high settlements upon the mood and attitudes

Plaintiffs' Exhibit 366

of managements and work forces, and the impact of imports and the increased efficiency and productivity of foreign competitors upon the markets. The category also includes the laws that structure bargaining and those that impinge upon the economic pressures that are part and parcel of any strike situation.

In this latter instance, I would point to those state unemployment compensation laws that provide unemployment benefits to striking employes and to state and federal legislation that provides food stamps and other welfare assistance to strikers.

Dr. Herbert Northrop of the Wharton School of Finance, is about to issue a study that deals with public support to strikers. Charts he has developed indicate that the number of persons in nonpublic assistance households who were issued food stamps in Michigan during the period of the automotive strike rose from a low of about 50 thousand [7] persons in September 1970, to a high of over 400 thousand persons in November of 1970.

In Delaware County, Pennsylvania, during the period of the Westinghouse-Lester-UE strike, August 28, 1970 to January 25, 1971, the number of persons participating in a program of general assistance rose from less than 2,100 persons to about 4,500 individuals.

I believe it is valid to conclude that these measures changed appreciably the economic pressures attached to the strike. Certainly, the nature of strike benefits was changed from one of union-employe responsibility to one of government assisted responsibility.

• • • • •

[Plaintiffs' Exhibit 367]

Sept. 5, 1971

To The Members of Local 1107

Fellow Members:

The rejection of the contract with a vote to strike by the New York Plant Unit on August 14, was a precedent setting first under C.W.A. Not since the old days of the U.T.O. had New York Plant people rejected a contract and at the same time voted to strike.

• • • • •

[3] We are reaching the point where we will be receiving some help from Un-employment etc. It is therefore best to continue the fight and the unity you have displayed thus far.

• • • • •

[4] Thank you for your continued support. We will keep you informed of further developments.

Sincerely and fraternally,

Charles Black

cb:rfk

[Plaintiffs' Exhibit 369]

MEAN LENGTH OF STRIKES BY LOCATION FOR ALL STRIKES, STRIKES OF EIGHT WEEKS OR LESS AND MORE THAN EIGHT WEEKS

	New York (1)	*Rhode Island* (2)	*All Others* (3)
All Strikes			
Mean Length (Weeks	3.7	3.7	3.6
Standard Error (Weeks)	(0.13)	(0.37)	(0.03)
Number of Strikes	2,273	186	26,571
Strikes of Eight Weeks or Less			
Mean Length	1.8	2.1	1.9
Standard Error	(0.04)	(0.15)	(0.01)
Number of Strikes	2,002	165	23,000
Percent of All Strikes	88.08	88.71	86.56
Strikes of More than Eight Weeks			
Mean Length	17.2	16.0	14.7
Standard Error	(0.59)	(1.01)	(0.12)
Number of Strikes	271	21	3,571
Percent of All Strikes	11.92	11.29	13.44

Source: U.S. Department of Labor, Bureau of Labor Statistics, Computer Tape of Analysis of work stoppages, 1968-73.

[Plaintiffs' Exhibit 370]

MEAN LENGTH AND NUMBER OF STRIKES FOR STRIKES OF MORE THAN EIGHT WEEKS

State	*Mean Length (Weeks)*	*Standard Error*	*Number of Strikes*
	(1)	*(2)*	*(3)*
New York	17.243	0.5928	271
Rhode Island	16.034	1.020	21
States With 100 or More Strikes			
Pennsylvania	13.991	0.3123	423
Ohio	14.680	0.3672	332
California	14.849	0.4361	278
Michigan	15.426	0.5815	212
Illinois	13.937	0.4475	210
Missouri	15.238	0.7389	145
New Jersey	13.901	0.6321	143
Indiana	14.681	0.8473	128
Texas	14.659	0.5632	113
Massachusetts	14.660	0.7958	110
States with 50 to 100 Strikes			
Tennessee	14.861	0.8035	99
Wisconsin	14.574	0.6240	96
Kentucky	14.367	0.6564	91
West Virginia	16.005	0.7739	84

Plaintiffs' Exhibit 370

Alabama	14.838	0.7925	74
Florida	15.084	0.8576	73
Iowa	14.303	0.8463	66
Georgia	14.787	0.7990	59
Maryland	14.906	0.8075	58
Minnesota	13.350	0.9426	58
Connecticut	15.061	1.0242	56
Louisiana	15.277	1.0155	52
Washington	16.003	0.9078	52
States With 50 Strikes or Less			
Oregon	13.633	0.6060	49
Virginia	16.114	1.2394	44
Arkansas	16.763	1.2426	38
North Carolina	15.147	1.2389	36
Colorado	13.853	1.4468	34
Kansas	15.437	1.3178	32
Oklahoma	13.235	0.7140	28
Arizona	12.537	0.6198	25
Delaware	15.526	1.0750	25
Mississippi	13.354	1.0818	25
Nebraska	16.634	1.4980	25
South Carolina	16.391	1.2981	19
Montana	14.462	0.8595	17
Maine	13.795	1.3075	16

Idaho	16,238	2.4928	15
New Mexico	14.238	1.3046	15
Utah	12.781	0.9477	15
Nevada	16.735	2.0936	14
Alaska	14.011	1.0951	13
North Dakota	13.538	1.3321	13
South Dakota	15.286	2.1519	13
Vermont	19.429	2.2757	13
District of Columbia	15.100	1.3405	10
New Hampshire	21.314	4.8625	10
Hawaii	15.464	1.8469	8
Wyoming	13.327	1.8153	7

Source: U.S. Department of Labor, Bureau of Labor Statistics, Computer Tape of Analysis of Work Stoppages, 1968-73.

ABLE 1 ... PROJECTED RESPONSES OF NONUNION AND UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"Under New York State law, in industries covered by unemployment compensation, people who are out of work because of a strike become eligible for unemployment benefits after 8 weeks of unemployment. The maximum benefit is $95 per week, tax free. I am going to read you several statements about unemployment compensation. For each statement, please tell me whether you strongly agree, agree, disagree, strongly disagree, or are undecided.

"Because unemployment compensation is available to strikers in New York State, unions can achieve better settlements than they could otherwise."

	Percentage of all respondents	Percentage of respondents who expressed opinion
UNION MEMBERS		
Strongly agree	11.7 (±2.8)	14.3 (±3.4)
Agree	49.8 (±4.6)	60.9 (±4.8)
Disagree	18.3 (±3.4)	22.4 (±4.0)
Strongly disagree	1.9 (±1.0)	2.3 (±1.2)
No opinion	18.2 (±3.4)	-
NONUNION MEMBERS		
Strongly agree	16.0 (±3.2)	20.4 (±4.0)
Agree	43.6 (±4.6)	55.6 (±5.0)
Disagree	16.2 (±3.4)	20.7 (±4.2)
Strongly disagree	2.6 (±1.2)	3.3 (±1.6)
No opinion	21.6 (±4.0)	-

TABLE 2 ... PROJECTED RESPONSES OF NONUNION AND UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"Under New York State law, in industries covered by unemployment compensation, people who are out of work because of a strike become eligible for unemployment benefits after 8 weeks of unemployment. The maximum benefit is $95 per week, tax free. I am going to read you several statements about unemployment compensation. For each statement, please tell me whether you strongly agree, agree, disagree, strongly disagree, or are undecided.

"Unemployment compensation enables strikers to hold out longer."

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
Strongly agree	11.1 (±2.8)	12.7 (±3.2)
Agree	49.9 (±4.4)	57.0 (±4.8)
Disagree	25.5 (±4.0)	29.1 (±4.4)
Strongly disagree	1.1 (±0.8)	1.2 (±1.0)
No opinion	12.3 (±2.8)	-
NONUNION MEMBERS		
Strongly agree	20.0 (±3.6)	22.2 (±4.0)
Agree	54.8 (±4.6)	60.7 (±4.6)
Disagree	14.2 (±3.2)	15.8 (±3.6)
Strongly disagree	1.2 (±1.0)	1.4 (±1.0)
No opinion	9.7 (±2.8)	-

TABLE 3 ... PROJECTED RESPONSES OF NONUNION AND UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"Under New York State law, in industries covered by unemployment compensation, people who are out of work because of a strike become eligible for unemployment benefits after 8 weeks of unemployment. The maximum benefit is $95 per week, tax free. I am going to read you several statements about unemployment compensation. For each statement, please tell me whether you strongly agree, agree, disagree, strongly disagree, or are undecided.

"Unemployment compensation forces management to settle a strike more quickly."

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
Strongly agree	5.6 (±2.2)	6.6 (±2.4)
Agree	37.6 (±4.4)	44.4 (±5.0)
Disagree	38.6 (±4.4)	45.5 (±4.8)
Strongly disagree	3.0 (±1.6)	3.5 (±2.0)
No opinion	15.2 (±3.0)	-
NONUNION MEMBERS		
Strongly agree	9.2 (±2.6)	11.2 (±3.2)
Agree	36.8 (±4.4)	44.8 (±5.0)
Disagree	33.5 (±4.4)	40.7 (±5.0)
Strongly disagree	2.7 (±1.2)	3.2 (±1.6)
No opinion	17.8 (±3.6)	-

TABLE 4 ... PROJECTED RESPONSES OF UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"I am going to ask you to imagine that, during the coming year, you and your fellow employees go out on strike. The strike is still on after 2 months have passed. Assume that the various sources of income available to you are food stamps, general public assistance or welfare, unemployment compensation, union strike funds. I would like you to rank these sources of income. Which would you be most likely to seek -- food stamps, general public assistance or welfare, unemployment compensation, union strike funds? And which source of income would you rank second? And third?"

Food stamps - ranking

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
First	3.6 (±1.6)	3.8 (±1.8)
Second	14.6 (±3.2)	15.5 (±3.4)
Third	48.1 (±4.6)	51.0 (±4.6)
Fourth	28.0 (±4.0)	29.7 (±4.2)
No opinion	5.6 (±2.2)	-

TABLE 5 ... PROJECTED RESPONSES OF UNION MEMBERS IN NEW YORK STATE TO THE QUESTION·

"I am going to ask you to imagine that, during the coming year, you and your fellow employees go out on strike. The strike is still on after 2 months have passed. Assume that the various sources of income available to you are food stamps, general public assistance or welfare, unemployment compensation, union strike funds. I would like you to rank these sources of income. Which would you be most likely to seek -- food stamps, general public assistance or welfare, unemployment compensation, union strike funds? And which source of income would you rank second? And third?"

General public assistance or welfare - ranking

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
First	4.6 (±1.6)	4.8 (±1.8)
Second	13.3 (±3.0)	14.0 (±3.2)
Third	26.6 (±4.0)	28.3 (±4.2)
Fourth	49.7 (±4.6)	52.9 (±4.6)
No opinion	6.0 (±2.2)	-

TABLE 6 ... PROJECTED RESPONSES OF UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"I am going to ask you to imagine that, during the coming year, you and your fellow employees go out on strike. The strike is still on after 2 months have passed. Assume that the various sources of income available to you are food stamps, general public assistance or welfare, unemployment compensation, union strike funds. I would like you to rank these sources of income. Which would you be most likely to seek -- food stamps, general public assistance or welfare, unemployment compensation, union strike funds? And which source of income would you rank second? And third?"

Unemployment compensation - ranking

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
First	52.5 (±4.6)	53.5 (±4.6)
Second	32.5 (±4.2)	33.1 (±4.4)
Third	8.3 (±2.4)	8.4 (±2.6)
Fourth	4.8 (±2.2)	4.9 (±2.2)
No opinion	2.0 (±1.2)	-

TABLE 7 ... PROJECTED RESPONSES OF UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"I am going to ask you to imagine that, during the coming year, you and your fellow employees go out on strike. The strike is still on after 2 months have passed. Assume that the various sources of income available to you are food stamps, general public assistance or welfare, unemployment compensation, union strike funds. I would like you to rank these sources of income. Which would you be most likely to seek -- food stamps, general public assistance or welfare, unemployment compensation, union strike funds? And which source of income would you rank second? And third?"

Union strike funds - ranking

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
First	38.1 (±4.4)	39.1 (±4.6)
Second	37.2 (±4.4)	38.2 (±4.4)
Third	11.0 (±2.8)	11.3 (±2.8)
Fourth	11.1 (±2.6)	11.4 (±2.6)
No opinion	2.6 (±1.4)	-

TABLE 8 ... PROJECTED RESPONSES OF UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"I am going to ask you to think about a situation that might occur in labor-management relations. Suppose a union has asked for a 12 percent pay increase. The company has offered 6 percent. A vote is held on whether or not to strike. Union members are told that, if the strike continues for 8 weeks, they will be eligible for unemployment compensation. Do you think that the existence of unemployment compensation will substantially affect the vote on striking, affect the vote somewhat, or not affect the vote at all?"

[PLAINTIFFS' EXHIBIT 383]

242

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
Substantially	19.6 (±3.6)	20.8 (±3.8)
Somewhat	47.3 (±4.4)	50.0 (±4.6)
Not at all	27.7 (±4.0)	29.2 (±4.2)
No opinion	5.4 (±2.0)	-

TABLE 9 ... PROJECTED RESPONSES OF UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"Now, suppose that the union has been on strike for 6 weeks. The union still wants 12 percent, and the employer is still offering 6 percent. There is now a 2-week wait for unemployment compensation. A vote is held on whether or not to continue the strike. Do you think the expectation of unemployment compensation in 2 weeks will substantially affect the vote on continuing to strike, affect the vote somewhat, or not affect the vote at all?"

[PLAINTIFFS' EXHIBIT 384]

243

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
Substantially	29.8 (±4.2)	31.0 (±4.2)
Somewhat	45.6 (±4.4)	47.4 (±4.6)
Not at all	20.8 (±3.6)	21.6 (±3.8)
No opinion	3.7 (±1.6)	-

TABLE 10 ... PROJECTED RESPONSES OF UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"Now, suppose that the strike has lasted 8 weeks. The union's demand and company's offer are still at 12 percent and 6 percent. There is another vote on whether to continue to strike. Will the fact that union members are now eligible for unemployment compensation substantially affect the vote on continuing to strike, affect the vote somewhat, or not affect the vote at all?"

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
Substantially	43.4 (±4.4)	45.3 (±4.6)
Somewhat	36.9 (±4.4)	38.5 (±4.4)
Not at all	15.4 (±3.0)	16.1 (±3.2)
No opinion	4.3 (±1.8)	-

TABLE 11 ... PROJECTED RESPONSES OF NONUNION AND UNION MEMBERS IN NEW YORK STATE TO THE QUESTION:

"May I have your opinion on this survey -- would you say that the questions were worded in such a way as to favor management, to favor unions, or to be equally fair to unions and management?"

UNION MEMBERS	Percentage of all respondents	Percentage of respondents who expressed opinion
Favors management	14.1 (±3.0)	14.5 (±3.2)
Favors unions	9.5 (±2.6)	9.7 (±2.6)
Equally fair	73.5 (±4.0)	75.7 (±3.8)
No opinion	2.9 (±1.4)	-
NONUNION MEMBERS		
Favors management	10.5 (±2.8)	10.9 (±2.8)
Favors unions	11.6 (±2.8)	12.0 (±3.0)
Equally fair	74.2 (±4.0)	77.1 (±3.8)
No opinion	3.8 (±1.6)	-

[Plaintiffs' Exhibit 407]

TABLE 1

MEAN LENGTH OF STRIKES BY LOCATION FOR ALL STRIKES, STRIKES OF EIGHT WEEKS OR LESS AND MORE THAN EIGHT WEEKS

	New York	Rhode Island	All Others
	(1)	(2)	(3)
All Strikes			
Mean Length (Weeks)	3.5	3.7	3.6
Standard Error (Weeks)	(0.09)	(0.27)	(0.02)
Number of Strikes	4,556	350	50,972
Strikes of Eight Weeks or Less			
Mean Length	1.8	2.1	1.9
Standard Error	(0.03)	(0.11)	(0.01)
Number of Strikes	4,068	304	44,391
Percent of All Strikes	89.28	86.86	87.09
Strikes of More than Eight Weeks			
Mean Length	17.4	14.7	15.0
Standard Error	(0.50)	(0.74)	(0.10)
Number of Strikes	488	46	6,581
Percent of All Strikes	10.71	13.14	12.91

Source: U.S. Department of Labor, Bureau of Labor Statistics, Computer Tape of Analysis of Work Stoppages, 1965-74.

[Plaintiffs' Exhibit 408]

TABLE 2

MEAN LENGTH AND NUMBER OF STRIKES FOR STRIKES OF MORE THAN EIGHT WEEKS

State	Mean Length (Weeks)	Standard Error (Weeks)	Number of Strikes
	(1)	(2)	(3)
New York	17.389	0.50	488
Rhode Island	14.668	0.74	46
States With 100 or More Strikes			
Pennsylvania	14.371	0.29	704
Ohio	14.503	0.29	631
California	14.492	0.30	522
Michigan	15.406	0.42	413
Illinois	14.482	0.42	401
New Jersey	14.472	0.58	262
Missouri	15.062	0.53	253
Indiana	15.204	0.62	239
Texas	15.696	0.60	230
Massachusetts	14.342	0.55	207
Wisconsin	15.309	0.56	188
Tennessee	16.184	0.91	185
Kentucky	14.213	0.54	168
Florida	16.029	0.98	165
Alabama	14.984	0.56	157
West Virginia	15.897	0.64	139
Washington	15.002	0.66	125
Iowa	14.092	0.63	123
Connecticut	15.596	0.80	106
Georgia	14.599	0.61	102
Maryland	15.928	1.09	101
States With 50 to 100 Strikes			
Minnesota	13.473	0.74	96
Virginia	17.378	0.99	90
Louisiana	15.228	0.85	89
Oregon	14.614	0.89	88
North Carolina	16.882	0.89	70
Arkansas	16.710	1.05	66
Oklahoma	14.414	0.77	59
Kansas	13.962	0.89	56
Colorado	14.852	1.16	54
States With 50 Strikes or Less			
Nebraska	17.571	1.32	39
Arizona	13.722	0.96	38
South Carolina	16.673	1.31	38
Mississippi	13.911	1.05	37
Delaware	15.130	0.92	34
Nevada	16.781	1.50	32
Montana	14.038	1.07	30
New Mexico	16.576	1.76	28
Maine	14.370	1.15	27
Utah	15.164	1.87	27
District of Columbia	17.509	3.39	23
Idaho	17.633	2.12	23
New Hampshire	18.248	2.71	19
North Dakota	14.248	1.28	19
Vermont	19.611	1.87	18
Alaska	14.294	0.96	17
Hawaii	15.420	2.12	17
South Dakota	14.348	1.81	16
Wyoming	14.214	1.81	10

Source: U.S. Department of Labor, Bureau of Labor Statistics, Computer Tape of Analysis of Work Stoppages, 1965-74.

n/c/r/a

[Defendants' Exhibit 1]

Defendants' Exhibit 1

Comparison of State Unemployment Insurance Laws

U.S. DEPARTMENT OF LABOR
J. D. Hodgson, Secretary

Manpower Administration
Unemployment Insurance Service

January 1972

Defendants' Exhibit 1

TABLE 405.—DISQUALIFICATION FOR UNEMPLOYMENT CAUSED BY LABOR DISPUTE

ELIGIBILITY

State	Duration of disqualification			Disputes excluded if caused by--			Individuals are excluded if neither they nor any of the same grade or class are--			
	During stoppage of work due to dispute (29 States)	While dispute in active progress (12 States)	Other (11 States)	Employer's failure to conform to--			Lockout (15 States)	Participating in dispute (42 States)	Financing dispute (30 States)	Directly interested in dispute (42 States)
				Contract (4 States)	Labor law (4 States)					
(1)	(2)	(3)	(4)	(5)	(6)		(7)	(8)	(9)	(10)
Ala.										
Alaska	X									
Ariz.										
Ark.										
Calif.		X								
Colo.										
Conn.										
Del.										
D.C.	X									
Fla.										
Ga.										
Hawaii	X	X								
Idaho										
Ill.										
Ind.	X									
Iowa										
Kans.	X	X								
Ky.										
La.										
Maine	X									
Md.										
Mass.	X	X								
Mich.										
Minn.										
Miss.	X									

(Table continued on next page)

TABLE 405.—DISQUALIFICATION FOR UNEMPLOYMENT CAUSED BY LABOR DISPUTE (CONTINUED)

State	Duration of disqualification			Disputes excluded if caused by--			Individuals are excluded if neither they nor any of the same grade or class are--		
	During stoppage of work due to dispute (29 States)	While dispute in active progress (12 States)	Other (11 States)	Employer's failure to conform to-- Contract (4 States)	Employer's failure to conform to-- Labor law (4 States)	Lock-out (15 States)	Participating in dispute (42 States)	Financing dispute (30 States)	Directly interested in dispute (42 States)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Mo.	X 2/						X	X	X
Mont.	X				X		X	X	X
Nebr.	X						X	X	X
Nev.		X					X	X	X
N.H.	X 2/ 5/			X		X	X	X	X
N.J.	X						X	X	X
N.Mex.	X						X		X
N.Y.			X 6/						
N.C.			X 2/						
N.Dak.	X						X		X
Ohio			X 1/ 10/			X			
Okla.	X						X		X
Oreg.		X					X	X	X
Pa.	X					X	X		X
P.R.	X						X		X
R.I.			X 6/				X 4/	X 4/	X 4/
S.C.		X					X	X 4/	X
S.Dak.	X						X	X	X
Tenn.		X					X		
Tex.	X 7/						X 7/	X 7/	X 7/
Utah	X 5/ 10/				X	X 3/			(8)
Vt.	X						X 4/	X 4/	X 4/
Va.			X 2/				X	X	X
Wash.	X						X	X	X
W.Va.	X 11/			X 3/		X	X	X	X
Wis.		X							
Wyo.	X						X	X	X

(Footnotes on next page)

(Footnotes for Table 405)

1/ So long as unemployment is caused by existence of labor dispute.

2/ See text for details.

3/ By judicial construction of statutory language.

4/ Applies only to individual, not to others of same grade or class.

5/ Disqualification is not applicable if claimant subsequently obtains covered employment and: earns 8 x his wba or has been employed 5 full weeks (Maine); earns at least $900 (Mass.); works at least 5 consec. weeks in each of which he earned 120% of his wba (N.H.); earns $700 with at least $20 in each of 19 different calendar weeks (Utah). However, BPW earned from ER involved in the labor dispute cannot be used to pay benefits during such labor dispute (Mass. and Utah).

6/ Fixed period: 7 consec. weeks and the waiting period or until termination of dispute (N.Y.); 6 weeks and waiting period (R.I.). See Table 303 for waiting period requirements.

7/ So long as unemployment is caused by claimant's stoppage of work which exists because of labor dispute. Failure or refusal to cross picket line or to accept and perform his available and customary work in the establishment constitutes participation and interest.

8/ Disqualification is not applicable if employees are required to accept wages, hours, or other conditions substantially less favorable than those prevailing in the locality or are denied the right of collective bargaining.

9/ Disqualification not applicable to any claimant who failed to apply for or accept recall to work with an ER during a labor dispute work stoppage if claimant's last separation from ER occurred prior to work stoppage and was permanent.

10/ Applicable only to establishments functionally integrated with the establishments where the lockout occurs (Mich.). Employee not ineligible: unless the lockout results from demands of employees as distinguished from an ER effort to deprive the employees of some advantage they already possess (Colo.); if individual was laid off and not recalled prior to the dispute, if he was separated prior to the dispute, if he obtained a bona fide job with another ER while dispute was in progress (Ohio); if the ER was involved in fomenting the strike (Utah).

11/ Disqualification ceases: when operations have been resumed but individual has not been reemployed (Ga.); within 1 week following termination of dispute if individual is not recalled to work (Mass.). If the stoppage of work continues longer than 4 weeks after the termination of the labor dispute, there is a rebuttable presumption that the stoppage is not due to the labor dispute and the burden is on the ER to show otherwise (W.Va.).

[Defendants' Exhibit 11; Transcript of 1971 Recorded Telephone Message; New York City]

This is CWA, Local 1101. Wednesday, November 3rd. 6:50 p.m. John Keefe, secretary reporting.

Bargaining was delayed today at the company's request. The union presented its demand number 11 which covers forced overtime. The union demanded eight hour limitation on the number of hours a member could be forced to work overtime. This would be a year-round application. There would be no forced overtime on a union meeting night. And there would be a minimum of four hours notice before any forced overtime assignment.

The company rejected all of the demands and accused the union of encroaching on a management prerogative—the right to assign overtime. They said their proposal on forced overtime, as contained in the rejected July 18th offer, was a give on their part. The company agreed that the rejected July 18th offer did include the stipulation that the nine hour application to qualify for the double time application would apply to all tours whether 40, 37½ or 35 hours.

Bargaining is set to resume tomorrow, Thursday.

Keep in touch with this tape for further information.

Thank you for calling.

[Defendants' Exhibit 23; Transcript of 1971 Recorded Telephone Message; Westchester County]

July 26th. 6 p.m. This is Dan Keenan.

So far in the downstate area membership meetings have been held here in Westchester and also in 1104-Nassau, in 1108-Suffolk, in 1102-Staten Island and today in Local 1106-Queens.

I am happy to be able to report to you from first hand observation that the unanimity expressed at our meeting in Westchester has been expressed just as strongly by our brothers and sisters downstate. It has been reported to me that approximately 80,000 men and women across the country are still on strike.

The New York State presidents have requested me, as chairman of their plant coordinating council, to formally request the Attorney General of the State of New York to investigate the possibility of collusion between CWA and the New York Telephone Company to keep us away from the bargaining table.

I am also complying with the request of many of the local presidents to coordinate the locals in making a request for a special convention of CWA on the following situation.

Things have not changed. No negotiations are in progress even though, as of this date, New York plant is still on contract.

This single most important thing that you, the membership of Local 1103, can do for yourself and for your futures is to remain steadfast in your complete rejection of this complete farce and failure called a contract. I repeat . . . Nothing is changed. We are still on strike. We are still fighting for enonomic justice for the telephone worker.

This is CWA, Local 1103, AFL-CIO, Scarsdale, New York.

Thank you for calling.

[DEFENDANTS' EXHIBIT 27; Transcript of 1971 Recorded Telephone Message; Queens County]

Local 1106, CWA, Queens County, New York. Tuesday, December 28th. This is Frank McQuail.

In Stamford, Connecticut today Local 1106 members, in a joint action with other downstate locals, picketed Southern New England Bell off the job in retaliation against the importation of management scabs being brought into New York. Members of the independent union honored our lines without question. Apparently they despise the actions of these scabs as much as we do.

It's ironic to note two completely different stories recently. One which is an outline of the Public Service Commission report which indicates that service by the phone company continues to improve despite the strike. The second reports the telephone company as being one of the largest contributors to the Governor's transportation bond issue campaign, something they should have little or no interest in. And that seems to tell it all.

Thank you for calling.

[DEFENDANTS' EXHIBIT 28; Transcript of 1971 Recorded Telephone Message; Queens County]

Local 1106, CWA. Saturday, December 4th. 3 p.m.

The union and company bargaining teams met in joint session. Discussion centered around wages and the cost of living in metropolitan New York. We cannot base our salaries on a nationwide index. We have had the highest

Defendants' Exhibit 32

cost of living in the continental United States for the last 54 months. If we accepted the national average the cost of living in New York would have to go up $30 in order for us to get the $12 projected figure.

Wednesday's Daily News and Times stated that not alone is the company discriminating against the union, but more so against blacks, Puerto Ricans and females. This is the opinion of the federal Economic Opportunity Commission. Archie Bunker is alive and well and managing the Bell System.

We would like to stress that we have entered into highly intensive bargaining. Negotiations will continue.

This is Bill Ryan.

Thank you for calling.

[DEFENDANTS' EXHIBIT 32; Transcript of 1971 Recorded Telephone Message; Queens County]

Sunday, September 5th. 2:00 p.m.

These are very difficult times for all our members and we realize this. Your leaders in their desire to get you a just wage increase and decent working conditions have been faced with the problems of combating not only the company but the International Union, a wage freeze, and in some cases, distortion in the news and the press. It would be impossible to respond to the daily half-truths and lies that you are being subjected to.

Very basically it is the position of the local's leadership in New York State that the wage increases and cost-of-

Defendants' Exhibit 33

living increases should be based on cost-of-living in New York State and should not be the same as the rest of the company. And the contract language, which has made the telephone job one of the most insecure, abusive jobs in the community, must be change, and this includes the "N" day.

We believe that members are fed up with the Mickey Mouse operations of the telephone company and its powerless Industrial Relations department which likes to provoke rather than resolve problems. All our demands have been presented to the company and the company has requested a recess until Tuesday to study them.

Our local held a local meeting Wednesday at which over a thousand members and the press were present followed by a complete question and answer period. The meeting terminated with a standing, overwhelming show of support.

Our strike is as strong or stronger than it's ever been.

This is Ed Creegan for Local 1106, CWA, Queens, New York.

Thank you for calling.

[DEFENDANTS' EXHIBIT 33; Transcript of 1971 Recorded Telephone Message; Queens County]

Tuesday, August 17th. 7 p.m.

There will be a meeting of all the New York plant local presidents tomorrow.

We should have information on what effect the wage freeze will have on our bargaining. The rumors are plentiful but none of them are based on fact because the facts are

Defendants' Exhibit 34

not yet known. There is no reason to believe that we cannot negotiate a good contract, including wages within the limitations of any restrictions voiced by the government.

You are the most militant union members in the CWA or any other union. This is a difficult period but a strike is not supposed to be easy. If we stick together and don't lose faith we will win out.

This is Ed Creegan for Local 1106, CWA, Queens, New York.

Thank you for calling.

[DEFENDANTS' EXHIBIT 34; Transcript of August 9, 1971, Recorded Telephone Message; Queens County]

Local 1106, CWA, Queens County, New York. This is Frank McQuail.

You've all received letters from Ellinghaus and Moses and phone calls from your foremen. You've also received letters from Joe Beirne and Morton Bahr giving you enough reading material to last at least half a lifetime. When it comes down to the nitty-gritty it is you individually who will determine the acceptability of this contract. Their comparisons to the course of multitude of letters which are placed in our wages would probably have satisfied our original demands.

But the present Madison Avenue approach of president Beirne giving one minute commercials on radio to sell a contract like it was a bar of soap is ridiculous. If half the effort expended in this direction had been used to influence

the company prior to our strike, we would not now be on strike. Instead we are inundated through every available media with the sale of a contract, rather than to let the contract stand solely on its own merit. A good contract would not necessitate all the promotional high pressuring that we are being subjected to.

If you have not used your ballot, do so immediately. Let the Bell System know our dissatisfaction and let the International know that we truly do understand what this so-called package means to us in New York. There is one glaring fact, using the formula which gives New York only $4 over the original pattern in the first year. The average of the consumer price index, which will have New York undoubtedly at the high end, we will lose at least one to two per cent in each of the second and third years just through this one item. Think for yourselves, vote this contract down or be prepared to live with it.

Thank you for calling.

[Defendants' Exhibit 35; Transcript of 1971 Recorded Telephone Message; Queens County]

Thursday, August 5th. 6 p.m.

Anyone who has not received a ballot must call 275-5900 by 12 Noon tomorrow, Friday, August 6th.

There will be a rally at 12 Noon, Tuesday in front of 195 Broadway. All members are urged to attend.

Those of you who have not yet mailed in your ballot, I urge you to do so and vote "no."

I know you have been bombarded with material telling you what a good offer the company is making. I can only tell you this. If you vote "yes" you've been had and the company will make you eat this contract page by page. The contract language is the same as they used to harrass and abuse you for years. There is no change in "N" days, forced overtime and transfer procedure. Aside from the little or no increase in benefits.

One final point I take strong exception to the personal attacks on our local president, John Renck by the telephone company and Morty Bahr, the CWA vice president, who is located at 85 Worth Street. If it's politics for John Renck to state that either Joe Beirne insisted in getting a fair contract or we intend to ship him out, then in my opinion this is the way politics should work. John would be gutless and irresponsible if he did not tell CWA and Beirne when they were wrong. I feel that every member who agrees with me should drop Bahr a note with a copy to this office and a second copy to Joe Beirne at 1925 Cane Street, Northwest, Washington, D.C., 20006.

Our membership has destroyed every myth about telephone people being lousy union men and women. Your attitude and support since this strike began could not be better.

This is Ed Creegan for Local 1106, CWA, 8948 Metropolitan Avenue, Rego Park, New York.

Thank you for calling.

[Defendants' Exhibit 36; Transcript of August 5, 1971, Recorded Telephone Message; Queens County]

The following letter was sent to District Vice President Bahr in response to his letter of July 27th:

"Your reference to a statement in the second paragraph alleging I had made certain statements at the Queens membership meeting on July 26th in connection with the New York State Attorney General's office are inaccurate and misleading.

You also make reference to your insistence I personally made charges against the union immediately before the Attorney General. If charges are filed. I feel would be my obligation to present all the facts and all the circumstances surrounding the bargaining of the New York plant contract if requested to do so. However, I am also aware that under certain provisions which in the union's constitution what you are insisting I do would immediately lead to automatic revocation or suspension of the charter of my local. I have no intention of falling into this trap.

If I am called upon to testify, I would request full immunity be granted to myself in writing by the executive board of the union or any other member also requested to do so. I contend further that the five other elected members of the union's bargaining committee agree with my position —I or any other member of the elected bargaining team did not sign or in any other manner accept the New York Telephone's last offer for submission to the rank-and-file of the New York plant bargaining unit. We never had a proper opportunity to negotiate the plant contract and that is the reason we are unanimously urging its rejection.

Defendants' Exhibit 37

"In closing I would like to point out something you had failed to mention in your letter. The fact that all of the New York plant local presidents at a meeting in the Manhattan Hotel on Sunday, July 18th after unanimously rejecting the New York Telephone Company's so-called last offer, was promised it would not be submitted to a ratification vote. That promise was not kept.

Sincerely,

John Ronck,
the president of Local 1106, CWA"

[Defendants' Exhibit 37; Transcript of 1971 Recorded Telephone Message; Queens County]

Monday, August 2nd.

I have just been informed that the ballots on the so-called contract are being received by our members. Although your local representatives were not exactly sure when you would receive your ballots, apparently the president of the telephone company was sure because in that same mail there is a letter from Ellinghaus recommending that you accept the contract.

If you follow his advice and vote "yes" I can guarantee you that his company policies harassing you with forced overtime, absence control, ignoring seniority in temporary and permanent transfers, and all the other problems involved with the contract language that we were denied the right to negotiate will continue.

Your bargaining committee and every local president in the State of New York, also your local executive board, all three groups urge unanimously that you vote "no." This is the only way our bargaining committee can go back in and negotiate a decent contract.

All stewards are instructed to contact your constituents and urge them to reject this offer. This is your chance to show the telephone company and the CWA that we in New York are fed up with lousy contracts and lousy working conditions. Help us to fight for you. Reject this contract; vote "no."

This is Ed Creegan for Local 1106, CWA, Queens, New York.

Thank you for calling.

[DEFENDANTS' EXHIBIT 38; Transcript of 1971 Recorded Telephone Message; Queens County]

This is John Renck, president of Local 1106, CWA. 8:00 p.m. Thursday evening, July 29th.

Today I had the pleasure to address 5,000 members of Local 1101, CWA in Manhattan Center along with seven other downstate local presidents. I made a statement at that meeting charging anyone who states that I, or any other member of the six man elected local bargaining team, signed or in any matter accepted for submission to the rank and file of the New York plant bargaining unit the so-called last offer of the New York Telephone Company management is a liar.

At the present time district vice president Bahr, along with various vice presidents of the New York Telephone Company, have already sent letters to all members in New York State and the company to all employees in New York State making this allegation.

I do not have the resources to duplicate their propaganda efforts to mislead you. For the record the charge of collusion between CWA and the New York Telephone Company was made by Dan Keenan, president of Local 1103 and chairman of the New York plant coordinating council, an affiliation of 23 plant locals in New York State. I support this charge and as a member of the bargaining team state that collective bargaining for the New York plant contract does not take place across the bargaining table by your elected committee.

A formal filing of charges will be accomplished when our attorneys have completed their briefs. I guarantee you this will be done. I have stated many times that when our International Union is unjustly charged, I will defend them and you have heard me state this many times. However, I feel that the rank and file of the New York plant bargaining unit does not have an opportunity to have our elected bargaining team negotiate our own contract.

I will not stand silent on this issue and because of this allegations have been made against me by the CWA and the management of New York Tel. To have been silent would have been cowardly and not in the best interests of the 32,000 members of New York plant.

This is Local 1106, CWA, AFL-CIO, Queens County, New York.

Thank you for calling.

[Defendants' Exhibit 39; Transcript of 1971 Recorded Telephone Message; Queens County]

July 27th. 4 p.m.

This office has been informed that the telephone company management are calling on members at home and asking them what they are looking for in order to return to work. All members should inform the company that you have a union bargaining committee and if they're ever going to ever bargain in good faith they will contact our rank and file members of the bargaining committee of which John Renck, our local president, is a member.

Let me make one point very clear. The company's present offer has no change in the contract language and they're right to assign overtime whenever they feel like it, except for a 13 hour limitation where they worked 15 hours before. Also, there is no change in "N" day language. No change in the language to recognize seniority on permanent and temporary transits within the local. Not only do we not get a change in contract language and many craft breakouts, but did not even get an opportunity to present our case to the company.

It's a take-it-or-leave-it offer. We are sick and tired of take-it-or-leave-it attitudes from the company and we are tired of Joe Beirne telling us what is good for us.

The company's operating management from Moses to vice president of Long Island to Ellinghaus, the president of the company, have continually maintained this snobbish attitude toward the union and this is why we could never and may never have good labor relations with the New York Telephone Company.

Most of our members are eligible for supplementary re-

Defendants' Exhibit 77

lief. Please contact or stop by the local office. We also have some jobs available.

If you continue to display the unity and guts to follow our leadership, we have the ability and guts to lead you.

This is Ed Creegan who is proud to be the vice president of Local 1106, 89-48 Metropolitan Avenue, Queens, New York.

Thank you for calling.

[Defendants' Exhibit 40; Transcript of 1971 Recorded Telephone Message]

July 26th. 7:30 p.m.

At a meeting held at Antun's this morning, 1,500 members voted unanimously to uphold the position of the local presidents and executive board of this local to maintain the strike against the New York Telephone Company.

There was complete television and radio coverage of this meeting. We will remain on strike until such time as we can negotiate our own contract.

This is Bill Ryan, Local 1106, CWA.

Thank you for calling.

[Defendants' Exhibit 77]

[1] STATEMENT OF
NEW YORK TELEPHONE COMPANY

Preliminary Statement

This statement is submitted in accordance with Form PB-1, Part V(c) in support of a request for approval to

place into effect the wages contained in a Collective Bargaining Agreement between the New York Telephone Company and the Communications Workers of America, AFL-CIO, dated February 17, 1972, covering approximately 38,000 Plant bargaining unit employees throughout the State of New York. The wages are to be effective as of February 13, 1972. This agreement is the last of about 125 agreements reached during the current round of Bell System collective bargaining. It is the last agreement signed between the New York Telephone Company and the Unions representing its employees.

FACTS

The Bell System's 700,000 Union represented employees are divided into 125 collective bargaining units. They perform functions similar to those units in the New York Company, which is divided into seven bargaining units as follows: Upstate Commercial, Downstate Commercial, Upstate Accounting, Downstate Accounting, Upstate Traffic, Downstate Traffic, Plant Department-statewide. The [2] Plant Department employees are represented by the Communications Workers of America, AFL-CIO, an international union and the other bargaining units are represented by independent unions. The Company employs over 100,000 people, 78,000 of whom are represented by unions for collective bargaining purposes.

Early in the spring of 1971, collective bargaining negotiations commenced between Bell System Companies and the unions representing Bell System employees. On July 18, 1971 an agreement on the basic Bell System pattern was reached between the CWA and Bell System Com-

panies, including the New York Telephone Company. As a result of that national pattern agreement, 89 bargaining units represented by the CWA and other unions, containing 530,000 employees, including 3,000 employees in the New York Telephone Company's Upstate Commercial and Accounting units, obtained new Collective Bargaining Agreements, which were negotiated, ratified and became effective on different dates prior to the President's Freeze Order #11615. The agreements covering CWA represented units were ratified by the CWA members in separate elections in the different bargaining units throughout the country on August 14, 1971. However, the Plant employees of the New York Company failed to ratify the pattern agreement and voted instead to continue its strike, which lasted for a total of seven months.

Eleven other contracts covering approximately 44,000 employees in the Bell System, including the two contracts [3] for the 12,000 Downstate Commercial and Downstate Accounting employees in the New York Company, were also negotiated prior to the President's Freeze Order. These agreements were ratified on differen dates subsequent to August 15, 1971; the new rates were nevertheless permitted to go into effect retroactively to a date prior to the wage freeze.

Several additional agreements were signed and ratified between August 15 and November 14. Though some of these agreements provided for retroactive wage increases to dates prior to the freeze, they were allowed, under the Pay Board's rules, to become effective as of November 14, 1971. Included in this group is the agreement covering

the New York Company's 19,000 Downstate Traffic employees. On November 10, 1971 the Office of Emergency Preparedness permitted the New England Telephone and Telegraph Company to put into effect its wage increases retroactive to dates prior to August 15, 1971 for three of its bargaining units consisting of a total of 28,000 employees. The Office of Emergency Preparedness also permitted the Illinois Bell Telephone Company to put into effect similar percentage wage increases retroactive to June 27, 1971 for 14,000 of its Plant employees. In addition, the 5,700 Upstate Traffic employees of the New York Telephone Company were permitted by the Office of Emergency Preparedness to put into effect their wage increases retroactive to June 6, 1971 on the grounds that they were [4] linked to the Company's Upstate Commercial Agreement of July 19, 1971, which also had wage increases effective as of June 6, 1971.

All of the foregoing agreements that were signed and ratified during the freeze covered a total of 85,000 Bell System employees.

In addition, in the first week of August, 1971 approximately 20,000 supervisors of the New York Telephone Company and several thousand supervisors of other Bell System Companies received wage increases based on a similar national pattern. The Company's Plant employees are the only remaining group who have not received wage increases based on the national pattern.

Collective bargaining between the New York Telephone Company and the CWA continued during the strike which lasted for seven months. Agreement was finally reached through the intervention of the Federal Mediation and

Conciliation Service, with J. Curtis Counts personally conducting the mediation.

In order to reach agreement and settle the strike some additional items, both economic and non-economic, were added to the July 18, 1971 pattern, which was originally rejected by the CWA membership in the New York bargaining unit. (That pattern was actually embodied in a stipulation dated July 27, 1971, signed by the New York Telephone Company and the CWA.) The additional economic items recommended by the Mediator were:

[5] a) A Saturday premium of 10% effective on agreement and an additional 5% on the first Contract anniversary. This adds only .17% of total annual labor costs to the July 18, 1971 pattern at the Contract effective date. (An additional .08% is deferred to the anniversary date.)

b) Basic wages at the top step of the five year progression schedules were increased $1.00 in the highest and lowest wage zones and $1.50 in the other zones. This adds only .26% of total annual labor costs to the July 18, 1971 pattern.

These slight additions to the July 18, 1971 pattern are insignificant, especially when one considers that their percentages are significantly reduced for the first year of the Contract because of the seven month strike.

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Defendants' Exhibit 77

[12] CONCLUSION

As was indicated, the wage increases for the Company's Plant employees is merely the last stage of a long series of increases that were granted to all bargaining units in the Bell System. Had the Plant employees ratified the agreement reached at the same time as other CWA units ratified theirs on August 14, 1971, this application to the Board would not be necessary.

Moreover, when compared to the other 700,000 Bell System union employees and the thousands of supervisory employees who received increases based on the same national pattern, the 38,000 Plant employees appear to be an insignificant number. Permitting them to receive wage increases with only a slight departure from the Bell System [13] pattern could not possibly create the inflationary upsurge that the President's economic controls are designed to restrain.

It is respectfully urged that prompt consideration be given this application and that approval be granted to place into effect the initial wage items of this contract as of February 13, 1972.

Respectfully submitted,

NEW YORK TELEPHONE COMPANY

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO

Dated: February 23, 1972

[DEFENDANTS' EXHIBIT 86; Transcript of 1974 Recorded Telephone Message; Rochester]

Wednesday, December 24, 1974—Christmas Eve

On behalf of all the officers and the executive board members of Local 1170, we would like to say Merry Christmas to the members and their families. It is with a heavy heart that Christmas 1974 finds us on strike. Business this year makes us understand how close we are to one another. In deed the injury of one is the hurt of all. The management of the Company on behalf of 1500 members, your employees, the members that I humbly represent, we wish you and your families a Merry Christmas and hope that our differences can be resolved as quickly as possible. The Telephone Company should and has been a family. Let us both work to bring that family back together again.

This is Local 1170, C.W.A. saying Good Night To All, and To All a Good Night.

Merry Christmas.

[DEFENDANTS' EXHIBIT 89; Transcript of 1975 Recorded Telephone Message; Rochester]

C.W.A. TAPE RELEASE Wednesday, February 5, 1975

The Public Service Commission yesterday did not act on the Company's temporary rate increase and the case has been postponed another two weeks until February 18, 1975. The State AFL-CIO, through its President Ray Corbett has demanded that the Public Service Commission rebate all the telephone subscribers of the Telephone Company the money they have saved in wages since November

22, 1974 and as long as the strike lasts. Local 1170, C.W.A. will be passing out petitions supporting this position and demanding that the Company refund the money to the public at once. President Bahr will be at the Rochester Flagship tomorrow for a special press conference at 11:00 A.M. for a very important announcement concerning the strike.

This is Local 1170, C.W.A. thanking you for calling the tape, the place where we are still telling the truth.

[DEFENDANTS' EXHIBIT 90; Transcript of 1975 Recorded Telephone Message; Rochester]

Thursday, February 6, 1975

Vice President Bahr of the Communications Workers of America today called for the head of the State Mediation Service, Mr. McDonald to appoint a fact finding hearing before the public or a three member panel, one appointed by the President of the State AFL-CIO, one appointed by the Rochester Chamber of Commerce and one by the Chairman McDonald, with the report of the three member panel made public. The Company's answer was that bargaining should be done at the local level. Vice President Bahr's opinion is that there was no progress in today's meeting between Vice President Bahr and Vice President Tom Riley. The Company's position remains the same, that is, the Union must concede 100% to the Company's demands—work rules, temporary transfers, Union leaves, and lay off procedures before the Company will bargain on any other issues. This Union after 77 days on strike will not capitulate.

This is Local 1170, C.W.A. thanking you for calling the tape, the place where we are still telling the truth.

[DEFENDANTS' EXHIBIT 96; Transcript of 1975 Recorded Telephone Message; Rochester]

Thursday, March 27, 1975

The Public Service Commission in refusing Rochester Telephone's request for a temporary rate increase lists as one of its reasons—that the strike in an effect has improved the Company's net cash flow in earnings. Also the Commission will unquestionably want to take all the long term consideration in this account deciding on the proper level of a permanent relief for this Company. The Union has been informed that the Company is paying $620.00 per week for the scabs that they hired from Phoenix, Arizona plus an overtime rate of $16.80 per hour. This is just not fair or just even when we are working the Company does not pay us that plus if business is going so good for the Company with management doing our work, why do they need strangers from Arizona. Bad news.

This is Local 1170, C.W.A. thanking you for calling the tape, the place where we are still telling the truth.

[Defendants' Exhibit 97; Transcript of 1975 Recorded Telephone Message; Rochester]

C.W.A. Tape Release Thursday, April 10, 1975

Morton Bahr, Vice President of the Communication Workers of America today announced that the Union was soliciting massive support from the New York Congressional Delegation and State Legislatures and the public in general in its continuing effort to settle the nineteen week strike of the 1500 members of the Rochester Telephone Company. Mr. Bahr stated a repeated effort at the bargaining table has failed. The State Mediation Board has declared an impasse and has recessed negotiations subject to call. He pointed out that the Company President Beinetti has repeatedly refused to meet with the C.W.A. President Watts or anyone else and has chosen to leave the negotiations of the strike to a subordinate who has never negotiated a contract or has any previous experience. Bahr said in an offer made to the Company last week to request Mediation Chairman McDonnell to offer a non-binding proposal for settlement in the non-public atmosphere was not acceptable by management. The C.W.A. Vice President has called on the Public Service Commission to reject the Company's request for a permanent rate increase as long as the strike continues.

This is Local 1170, C.W.A. thanking you for calling the tape, the place where we are still telling the truth.

[Defendants' Exhibit 99; Transcript of 1975 Recorded Telephone Message; Rochester]

Friday, May 9, 1975

The charges that the Company has brought against Mr. Everett Warren a lineman, who was dismissed for alleged violations of the picket line has been thrown out of court by the justice of the peace in Henrietta. Now, how can the Company justify Mr. Everett Warren's dismissal. A petition requesting the Public Service Commission to refund to telephone subscribers will be mailed to all members. We must have 100% cooperation. Remember that the Company has saved almost seven million dollars during the strike with the subscribers still paying the full telephone bill.

This is Local 1170, C.W.A. thanking you for calling the tape, the place where you still hear the full truth.

[Defendants' Exhibit 100]

UNITED STATES DISTRICT COURT
Southern District of New York

73 Civ. 4557
(Owen, J.)

New York Telephone Company, Western Electric Company, American Telephone & Telegraph Company, Long Lines Department, and Empire City Subway Company (Limited),

Plaintiffs,

—against—

New York State Department of Labor, Louis L. Levine, Industrial Commissioner of the New York State Department of Labor, New York State Department of Taxation & Finance, and Mario A. Procaccino, State Commissioner of Taxation & Finance,

Defendants.

Answers and Objections to Defendants' First Interrogatories

To: Louis J. Lefkowitz
Attorney General of the
State of New York
Attorney for all Defendants
By: Maria Marcus
Assistant Attorney General
Two World Trade Center
New York, New York 10047

Defendants' Exhibit 100

Plaintiffs give the answers set forth below to the interrogatories served by defendants on March 28, 1975.

• • • • •

[9] *Interrogatory 9(a):* What was the average number of plaintiffs' employees, listed separately as to each plaintiff, who were scheduled to work but on strike during the period between July 21, 1971 and February 18, 1972?

[10] *Answers to Interrogatory 9(a):*[1][2]

Month	*TELCO*	*Empire*[3]	*AT&T*[4]
July 1971	31,084		3237
August	29,056	197	2247
September	29,943	125	498
October	30,462	113	326
November	30,289	94	
December	30,167	85	
January 1972	30,267	83	
February	30,069	80	

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(1) With respect to this and the remaining interrogatories, an extensive search of the records of each of the plaintiffs, reaching back through 1970, and consuming, we estimate, hundreds of man-hours, has been conducted in an effort to locate, obtain and compile the information requested by these complex and extensive interrogatories. Wherever the information sought either did not exist or existed in a different form, plaintiffs have supplied the most responsive existing information. Despite these efforts, Western Electric Company has been unable to complete its answers to interrogatories 9 through 12. Rather than delay the service of the answers contained herein, the information concerning Western Electric Company will be supplied, as soon as it is received, in a supplement to these answers. For the purposes of the answers to interrogatories 9 through 12, the other plaintiffs shall be referred to in the following manner: New York Telephone Company ("TELCO"), Empire City Subway Company (Limited) ("Em-

Defendants' Exhibit 100

[11] *Interrogatory 9(b):* What are the estimated salaries, wages, overtime payments, fringe benefits, including vacation pay and pension and medical plan contributions, which would have been paid during this period to the employees specified in (a) if they had not been absent, listed separately on a monthly basis as to each plaintiff? Describe the documents from which each of these estimates is derived.

Answers to Interrogatory 9(b):[1]

Month	*TELCO*[2]	*Empire*[3]	*AT&T*[4]
July 1971	$24,544,720.07		$ 764,500
August	23,943,082.22	108,000	1,657,960
September	24,767,690.02	69,000	344,100
October	25,264,711.02	62,000	63,210
November	25,165,494.49	52,000	
December	25,064,131.37	47,000	
January 1972	25,147,215.88	46,000	
February	24,982,708.37	44,000	

pire"), and American Telephone & Telegraph Company, Long Lines Department ("AT&T").

(2) These estimated averages exclude weekends and holidays.

(3) Empire's figures were compiled for the following periods: July 21-August 21, 1971; August 22-September 25, 1971; September 26-October 23, 1971; October 24-November 20, 1971; November 21-December 18, 1971; December 19, 1971-January 22, 1972; and January 23-February 18, 1972. The figures in this column appear next to the month covering the major part of each of these periods.

(4) AT&T's data are available only through October 8, 1971, and cover only its New York State employees.

(1) See footnote (1) to answers to interrogatory 9(a).

(2) Using data that reflects the number of union-represented employees and earnings per week, including vacation and over-

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[12] *Interrogatory 9(c):* What were the salaries, wages, overtime payments and fringe benefits, including vacation pay and pension and medical plan contributions, which were paid to the employees listed in (a), or those who ful-

time pay, for the week that includes the 15th of the month, an average weekly salary was computed using April, May and June 1971 for all employees in Plant, Traffic, Accounting and Commercial Departments. This average weekly salary was then multiplied by the average number of employees on strike and by 4.3 to equal an average month. Fringe benefits, pensions and medical plan contributions have been excluded because the data requested do not exist and, in any event, these payments were not discontinued during the strike. The TELCO data and computations used to prepare this answer are in the possession of Accounting Dept., General Financial Analyst, New York Telephone Company, 1095 Avenue of the Americas, New York, New York.

(3) All estimates were computed on the basis of various payroll records which show the employees' basic salaries, including vacation pay. The overtime payments included herein were computed using similar time periods in the previous year for the same number of employees and applying those factors to current basic wages. All figures are based on a 4.3 week month. Fringe benefits, pensions and medical plan contributions are treated as in footnote (2) for TELCO. The periods covered here are those listed in footnote (3) for Empire to answers to interrogatory 9(a). These records are in the possession of Angelo Tomeo, Financial Staff Manager, Empire City Subway Company (Limited), 140 West Street, New York, New York.

(4) All estimates were computed from summaries of computer printouts generated from payroll records based upon actual time reports for each employee in New York State. Such data are available only through October 8, 1971. This data recorded the total number of days lost, which was then multiplied by an estimated average wage rate of $30.00 per day per employee, including employee vacation pay. Fringe benefits, pensions and medical plan contributions are treated as in footnote (2) for TELCO. The summaries of computer printouts are in the possession of Al Filshie, Personnel Staff Supervisor, AT&T, Long Lines Department, 200 Park Avenue, New York, New York, for New York City, and of Robert Sullivan, Staff Supervisor, AT&T, Long Lines Department, 400 Hamilton Avenue, White Plains, New York, for upstate New York.

filled the same functions as such employees, during the periods between January 1, 1970 and July 1, 1971 and between March 1, 1972 and March 1, 1973, listed on a monthly basis and listed separately as to each plaintiff? Describe the documents from which each of these figures is derived.

[13] *Answers to Interrogatory 9(c):*[1]

Month	*TELCO*[2]	*Empire*[3]
January 1970	$24,786,120	$110,000
February	27,358,386	98,000
March	24,278,306	84,000
April	24,493,251	93,000
May	25,964,130	111,000
June	25,408,492	111,000
July	25,475,468	136,000
August	24,219,241	108,000
September	25,761,741	92,000
October	27,613,539	117,000
November	28,340,663	120,000
December	26,418,700	109,000
January 1971	16,334,472	83,000
February	29,204,927	136,000
March	27,268,211	149,000
April	25,620,061	135,000
May	24,647,648	136,000
June	24,769,006	145,000
March 1972	24,518,015	125,000
April	23,937,691	145,000
May	28,638,973	170,000
June	28,910,451	170,000

Month	*TELCO*[2]	*Empire*[3]
July	30,230,136	180,000
August	31,139,490	185,000
September	30,714,496	190,000
October	33,382,223	147,000
November	32,150,343	169,000
December	31,635,815	178,000
January 1973	30,140,444	148,000
February	30,220,451	180,000

[14] *Interrogatory 10:* During the period between July 21, 1971 and February 18, 1972, what wages were paid by plaintiffs, listed separately on a monthly basis as to each plaintiff, for (a) overtime for management employees; (b) overtime for non-supervisory employees; (c) employees borrowed from other employers and (d) extra guards?

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(1) See footnote (1) to answers to interrogatory 9(a). With respect to AT&T, the data requested in this interrogatory do not exist.

(2) Using data that reflect the number of union-represented employees and earnings per week, including vacation and overtime pay, for the week that includes the 15th of the month, average number of employees on strike during the period were multiplied by the average weekly earnings of employees for that union in each month and then multiplied by 4.3 to determine monthly amounts. Fringe benefits, pensions and medical plan contributions are treated as in footnote (2) for TELCO to answers to interrogatory 9(b). The TELCO data and computations used to prepare this answer are in the possession of Accounting Dept., General Financial Analyst, New York Telephone Company, 1095 Avenue of the Americas, New York, New York.

(3) These figures were derived from weekly payroll records converted into monthly totals by using a 4.3 weeks per month factor. The figures reflect salaries, wages, overtime, and vacation pay. Fringe benefits, pensions and medical plan contributions are treated as in footnote (2) for TELCO to answers to interrogatory 9(b).

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What percentage of wages to employees in (c) and (d) above were paid to employees who would otherwise have been employed by one of the plaintiffs or by a subsidiary of one of the plaintiffs? Describe the documents from which each of these figures is derived.

Answers to Interrogatory 10(a):[1]

Month	*TELCO*[2]	*Empire*[3]
July 1971	$11,922,000	
August	14,761,000	$42,300
September	16,167,000	22,700
October	17,157,000	24,100
November	15,623,000	21,700
December	13,967,000	17,500
January 1972	15,680,000	18,200
February	9,737,000	22,600

(1) These estimated figures have been rounded off. See footnote (1) to answers to interrogatory 9(a). With respect to AT & T, the data requested in interrogatory 10(a) do not exist.

(2) These figures were derived from summaries of administrative reports in the possession of Accounting Dept., General Financial Analyst, New York Telephone Company, 1095 Avenue of the Americas, New York, New York.

(3) These figures were derived from administrative reports, summarized for payroll reporting purposes, in the possession of Angelo Tomeo, Financial Staff Manager, Empire City Subway Company (Limited), 140 West Street, New York, New York. See footnote (3) for Empire to answers to interrogatory 9(a).

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[15] *Answers to Interrogatory 10(b):*[1]

Month	*Empire*[2]
July 1971	
August	$ 600
September	3,600
October	7,900
November	24,600
December	32,000
January 1972	30,600
February	32,400

(1) See footnote (1) to answers to interrogatory 9(a). With respect to TELCO and AT & T, the data requested in interrogatory 10(b) do not exist.

(2) The estimated figures have been rounded off. See footnote (3) for Empire to answers to interrogatory 9(a). These figures were derived from payroll records in the possession of Angelo Tomeo, Financial Staff Manager, Empire City Subway Company (Limited), 140 West Street, New York, New York.

[16] *Answers to Interrogatory10(c):*[1]

Month	*TELCO*[2][4]	*Empire*	*AT & T*[3]
July 1971	$ 36,000	$ 0	$ 745,550.31
August	262,000	0	1,993,114.00
September	3,568,000	0	722,366.00
October	4,815,000	0	249,795.00
November	4,813,000	0	167,272.00
December	4,625,000	0	84,520.00
January 1972	6,002,000	0	54,635.00
February	4,213,000	0	53,981.00

(1) See footnote (1) to answers to interrogatory 9(a). These figures include overtime pay.

(2) These estimated figures have been rounded off. They are derived from administrative reports in the possession of Accounting

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[17] *Answers to Interrogatory 10(d)*:(1)

Month	*TELCO*(2)	*Empire*	*AT & T*(3)
July 1971	$ 564,000	$ 0	$28,686.44
August	744,000	0	27,698.50
September	1,081,000	0	14,742.92
October	879,000	0	12,904.19
November	806,000	0	13,308.72
December	826,000	0	13,083.72
January 1972	961,000	0	20,777.45
February	538,000	0	19,039.24

Dept., General Financial Analyst, New York Telephone Company, 1095 Avenue of the Americas, New York, New York.

(3) These figures include both base and overtime pay for low-level management employees borrowed for strike duty by one department from another within AT & T, Long Lines Department. They do not include management within Plant, for example, who may have worked in Plant in a non-management capacity and do not include employees borrowed from other companies, if any. The figures for July through December, 1971, include both the New York City area (including New York City, Nassau and Suffolk Counties) and the Northeastern Area (including upstate New York, all of New England and New Jersey). The figures for January and February 1972 include only the Northeastern Area, because figures for the New York Area do not exist for those months. The February 1972 figure also includes February expenses not paid until March 1972. All of these figures are derived from Summary Strike Clearance Reports generated by AT & T's payroll department at the time of the strike. These reports are in the possession of Edwin J. Russell, District Accounting Manager, AT&T, Long Lines Department, 440 Hamilton Avenue, White Plains, New York.

(4) The percentage figure requested in connection with interrogatory 10(c) does not exist.

(1) See footnote (1) to answers to interrogatory 9(a). No wages for extra guard duty were paid to employees who would otherwise have been employed by one of the plaintiffs or by a subsidiary of one of the plaintiffs.

(2) These estimated figures have been rounded off. They represent Special Guard Service charged to expense and are derived

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[18] *Interrogatory 11*: (a) During the period between July 21, 1971 and February 18, 1972, what were plaintiffs' approximate revenues from monthly telephone service, and for telephone installations, listed on a monthly basis and listed separately as to each plaintiff? Describe the documents from which each of these figures is derived.

(b) During the periods between January 1, 1970 and July 1, 1971, and between March 1, 1972 and March 1, 1973, what were plaintiffs' approximate revenues for monthly telephone service and for telephone installations, listed on a monthly basis and listed separately as to each plaintiff? Describe the documents from which each of these figures is derived.

from administrative reports in the possession of Accounting Dept., General Financial Analyst, New York Telephone Company, 1095 Avenue of the Americas, New York, New York.

(3) These figures are derived from a summary of bills for all contract guard service at AT & T's 32 Avenue of the Americas location in New York City. The figures for July and August 1971 also include the total amounts paid to the Gleason Guard Service for all guard service provided AT & T's Northeastern Area (White Plains) for those months, according to Gleason's records. Total figures for extra guard service do not exist in AT&T's files.

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Answers to Interrogatory 11:[1]

		TELCO	
	Month	*Monthly Telephone Service*	*Telephone Installation*
11a	July 1971[2]	$67,491,896	$ 945,768
	August	67,531,973	864,067
	September	67,281,241	883,344
	October	67,083,394	1,107,803
	November	67,046,845	1,169,022
	December	67,000,648	1,478,217
	January 1972	66,701,470	1,141,228
	February[2]	65,549,370	1,356,053
11b	January 1970	65,789,095	2,111,140
	February	65,939,737	2,287,017
	March	66,148,407	1,643,702
	April	66,017,794	2,130,819
	May	66,452,429	2,160,821
	June	66,575,240	2,134,279
	July	66,601,008	2,063,378
	August	66,340,437	2,076,223
	September	66,620,662	2,096,493
	October	66,901,104	2,195,516
	November	66,770,915	2,052,892
	December	66,443,187	2,159,708
	January 1971	66,747,981	1,602,848
	February	66,810,197	1,824,964
	March	66,697,145	2,061,805

(1) This interrogatory is only applicable to TELCO. These figures were derived from administrative reports in the possession of Accounting Dept., General Financial Analyst, New York Telephone Company, 1095 Avenue of the Americas, New York, New York, and are adjusted by a price index of January 1970 = 1.00 in order to account for rate changes.

(2) Data for periods of less than one month are not available.

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[19] *Answers to Interrogatory 11:* (continued)

	TELCO	
Month	*Monthly Telephone Service*	*Telephone Installation*
April	67,126,401	2,296,676
May	67,618,738	2,172,422
June	67,562,435	2,201,377
March 1972	66,745,399	1,598,223
April	66,740,308	2,162,450
May	67,459,350	2,236,742
June	67,432,296	2,056,658
July	67,401,156	2,018,624
August	67,703,799	2,028,007
September	67,894,112	2,158,568
October	67,857,132	2,259,675
November	68,260,310	2,155,581
December	68,051,631	2,551,735
January 1973	68,303,583	1,888,815
February	68,268,711	2,060,816

Interrogatory 12: During the periods between January 1, 1970 and July 1, 1971, and between March 1, 1972 and March 1, 1973, what amounts were paid in overtime to (a) management employees and (b) non-supervisory employees, listed on a monthly basis and listed separately for each plaintiff? Describe the documents from which each of these figures is derived.

[20] *Answers to Interrogatory 12(a):*[1]

Month	*TELCO*[2]	*Empire*[3]
January 1970	$2,283,981	$ 3,300
February	2,427,102	5,100
March	2,389,472	5,400

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Answers to Interrogatory 12(a):[1] (continued)

Month	*TELCO*[2]	*Empire*[3]
April	3,089,301	8,100
May	2,929,980	8,900
June	2,432,175	8,000
July	1,772,674	4,700
August	1,249,959	6,600
September	1,300,529	3,700
October	1,702,747	5,000
November	1,810,701	6,900
December	1,655,435	4,700
January 1971	6,417,596	4,400
February	2,504,301	8,400
March	2,171,173	5,800
April	1,875,847	5,300
May	1,666,991	6,000
June	1,483,906	7,500
March 1972	2,399,171	10,700
April	1,975,413	7,900
May	1,760,390	8,200

(1) See footnote (1) to answers to interrogatory 9(a). With respect to AT & T, the data requested in interrogatory 12(a) do not exist.

(2) These figures were derived from an administrative report summarized manually by the Payroll Office from payrolls forwarded by the reporting departments showing overtime dollar amounts (number of units multiplied by dollar value) for first and second level management employees exempt from the Federal Fair Labor Standards Acts. The report does not include overtime paid to management employees who are not exempt from the law and are paid time and one half after 35 hours, which data are unavailable. Data supplied by Accounting Dept.

(3) These estimated figures have been rounded off. They were derived from administrative reports, summarized for payroll reporting purposes, in the possession of Angelo Tomeo, Financial Staff Manager, Empire City Subway Company (Limited), 140 West Street, New York, New York.

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Answers to Interrogatory 12(a):[1] (continued)

Month	*TELCO*[2]	*Empire*[3]
June	1,738,394	7,300
July	2,526,637	12,500
August	1,905,629	7,200
September	1,387,086	6,400
October	1,715,790	11,900
November	1,671,973	9,900
December	1,417,026	7,100
January 1973	1,087,111	8,300
February	841,813	11,300

[21] *Answers to Interrogatory 12(b):*[1]

Month	*Empire*
January 1970	$42,600
February	42,500
March	38,200
April	41,500
May	51,900
June	44,200
July	46,900
August	60,300
September	45,500
October	63,900
November	53,900
December	51,200
January 1971	30,300
February	56,300
March	56,600

(1) See footnote (1) to answers to interrogatory 9(a). With respect to TELCO and AT&T, the data requested in interrogatory 12(b) do not exist. See footnote (3) for Empire to answers interrogatory 12(a).

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Answers to Interrogatory 12(b): (continued)

Month	*Empire*
April	54,400
May	80,500
June	50,100
March 1972	47,100
April	53,300
May	46,500
June	52,200
July	62,500
August	47,100
September	45,400
October	48,600
November	52,800
December	57,400
January 1973	46,900
February	58,000

• • • • •

[25] Dated: New York, New York
May 23, 1975

Yours, etc.

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[DEFENDANTS' EXHIBIT 113A]

TABLE 1

MEAN LENGTH OF WORK STOPPAGES BY LOCATION FOR ALL STOPPAGES, STOPPAGES OF EIGHT WEEKS OR LESS AND MORE THAN EIGHT WEEKS
(1965-1974)

	New York (1)	*Rhode Island (2)*	*Other States (3)*
All Stoppages			
Mean Length (Wks)	3.5	3.7	3.6
Standard Error	0.0931	0.2664	0.0248
No. Stoppages	4,556	350	50,972
8 Weeks or Less			
Mean Length (Wks)	1.8	2.0	1.9
Standard Error	0.0290	0.1100	0.0094
No. Stoppages	4,068	304	44,391
Pct. of All Stoppages	89.28	86.85	87.08
More Than 8 Weeks			
Mean Length (Wks)	17.4	14.7	15.0
Standard Error	0.5021	0.7406	0.1022
No. Stoppages	488	46	6,581
Pct. of All Stoppages	10.71	13.14	12.91

[DEFENDANTS' EXHIBIT 113B]

TABLE 2

COMPARISON BY STATE OF MEAN LENGTH OF WORK STOPPAGE FOR STOPPAGES LASTING OVER EIGHT WEEKS
(1965-1974)

State	*Mean Length*	*Std Error*	*Stoppages*
AL	14.984	0.5573	157
AK	14.294	0.9578	17
AZ	13.722	0.9633	38
AR	16.710	1.0458	66
CA	14.493	0.1227	522
CO	14.852	1.1558	54
CT	15.596	0.7963	106
DE	15.130	0.9176	34
DC	17.509	3.3880	23
FL	16.029	0.4720	165
GA	14.599	0.6125	102
HI	15.420	2.1234	17
ID	17.634	2.1242	23
IL	14.483	0.2197	401
IN	15.204	0.1828	239
IA	14.092	0.6308	123
KS	13.962	0.8903	56
KY	14.213	0.5436	168
LA	15.228	0.8485	89
ME	14.370	1.1520	27
MD	15.928	0.4335	101
MA	14.342	0.2567	207
MI	15.407	0.2373	413
MN	13.473	0.7447	96
MS	13.911	1.0503	37
MO	15.062	0.3520	253
MT	14.038	1.0746	30
NB	17.571	1.3150	39
NV	16.781	1.4999	32
NH	18.248	2.7088	19
NJ	14.472	0.2020	262

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TABLE 2 (*Continued*)

State	*Mean Length*	*Std Error*	*Stoppages*
NM	16.577	1.7591	28
NY	17.390	0.2043	488
NC	16.882	0.8949	70
ND	14.248	1.2762	19
OH	14.504	0.0909	631
OK	14.414	0.7685	59
OR	14.614	0.8938	88
PA	14.372	0.0290	704
RI	14.668	0.7406	46
SC	16.673	1.3149	38
SD	14.348	1.8072	16
TN	16.184	0.4854	185
TX	15.696	0.4187	230
UT	15.164	1.8712	27
VT	19.611	1.8650	18
VA	17.378	0.9920	90
WA	15.002	0.6575	125
WV	15.897	0.6422	139
WI	15.309	0.1688	188
WY	14.214	1.8060	10

ANALYSIS OF STRIKES LASTING MORE THAN EIGHT WEEKS IN NEW YORK AND RHODE ISLAND COMPARED TO THE REST OF THE NATION

[DEFENDANTS' EXHIBIT 122A]

Industry	Number of Strikes: New York and Rhode Island	Number of Strikes: All Other States	Mean Length of Strikes (Weeks): New York and Rhode Island	Mean Length of Strikes (Weeks): All Other States	Standard Error of Difference	t-Statistic	Disparity in Strike Length
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Wholesale Trade	21	182	20.59	13.46	2.59	2.75	7.13
Nonelectrical Machinery	25	320	17.56	15.03	1.24	2.04	2.53
Apparel	13	57	20.14	14.24	3.52	1.68	5.90
Miscellaneous Services	11	38	19.87	14.49	3.34	1.61	5.38
Food Stores	1	38	25.86	15.38	6.62	1.58	10.48
Transportation Manufacturing	6	144	22.74	14.47	5.47	1.51	8.27
Instruments	4	26	23.21	12.13	7.39	1.50	11.08
Unclassified	5	91	22.03	17.66	3.33	1.31	4.37
Eating and Drinking Establishments	6	41	17.69	13.26	3.60	1.23	4.43
Autodealers	11	76	22.62	15.27	6.25	1.18	7.35
Public Services	3	16	22.67	14.70	7.04	1.13	7.97
Amusements	3	9	21.67	12.65	8.13	1.11	9.02
Chemicals	11	129	16.55	14.02	2.34	1.08	2.53
Building Materials	2	15	25.86	13.72	11.64	1.04	12.14
Furniture Manufacture	10	41	16.09	13.18	2.93	0.99	2.91
Utilities	1	42	18.86	14.56	4.99	0.86	4.30
General Retail	2	36	33.64	14.34	23.81	0.81	19.30
Furniture Sales	3	12	20.19	12.74	9.87	0.75	7.45
Lumber	2	65	25.36	14.70	15.53	0.69	10.66
Paper	5	79	17.11	14.09	4.53	0.67	3.02
Stone, Clay and Glass	3	160	17.81	14.50	5.26	0.63	3.31

Defendants' Exhibit 122A

Industry	Number of Strikes: New York and Rhode Island	Number of Strikes: All Other States	Mean Length of Strikes (Weeks): New York and Rhode Island	Mean Length of Strikes (Weeks): All Other States	Standard Error of Difference	t-Statistic	Disparity in Strike Length
Commmunication	8	76	16.14	14.43	3.00	0.57	1.71
Fabricated Metals	9	256	15.44	14.45	2.45	0.40	0.99
Other Transportation	5	45	14.26	13.23	2.97	0.35	1.03
General Contracting	36	330	13.48	13.14	1.16	0.29	0.34
Miscellaneous Manufacturing	4	34	16.25	15.82	2.03	0.21	0.43
Medical Services	1	51	16.43	15.38	6.62	0.16	1.05
Public Transportation	8	45	16.36	16.04	3.45	0.09	0.32
Hotels	1	15	13.86	13.47	5.82	0.07	0.39
Metals Mining	1	11	18.00	17.82	10.33	0.02	0.18
Primary Metals	11	166	17.05	17.16	3.72	-0.03	-0.11
Minerals Mining	1	20	14.00	14.81	5.12	-0.16	-0.81
Trucking	10	104	15.41	15.90	2.47	-0.20	-0.49
Movies	1	8	15.86	20.02	18.31	-0.23	-4.16
School	2	4	10.21	11.39	3.00	-0.39	-1.18
Leather Goods	1	10	11.29	16.04	10.67	-0.45	-4.75
Other Local Government	1	2	8.14	11.50	4.08	-0.58	-2.36
Printing and Publishing	14	104	16.24	17.63	1.90	-0.73	-1.39
Retail	1	9	8.71	13.41	4.51	-0.82	-3.70

Industry	*Number of Strikes* *New York and Rhode Island*	*All Other States*	*Mean Length of Strikes* *New York and Rhode Island*	*All Other States*	*Standard Error of Difference*	*t-Statistic*	*Disparity in Strike Length*
			(*Weeks*)				
	(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*
Air Transportation	8	87	14.66	16.57	1.94	–0.98	–1.91
Food	5	164	11.71	14.47	2.12	–1.30	–2.76
Auto Repairs	2	6	11.43	18.26	5.21	–1.31	–6.83
Textiles	4	21	13.54	16.92	2.27	–1.49	–3.38
Real Estate	4	9	9.29	17.32	4.22	–1.90	–8.03
Electrical Machinery	5	133	11.23	15.06	1.05	–3.65	–3.83
All Industries	291	3,327	17.18	14.80	—	—	2.38
Average of Difference*							2.41

* Each disparity in strike length weighted by the number of strikes in that industry, in New York and Rhode Island, and divided by the total number of strikes in New York and Rhode Island.

Source: U.S. Department of Labor, Bureau of Labor Statistics, Computer tape of Analysis of Work Stoppages, 1968-1973

Testimony

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

Judge RICHARD OWEN

73 Civ. 4557

NEW YORK TELEPHONE COMPANY, *et al.*,

—v.—

NEW YORK STATE DEPARTMENT OF LABOR, *et al.*

Appearances:

ARANOW, BRODSKY, BOHLINGER, BENETAR & EINHORN, 469 Fifth Avenue, New York, New York 10017. By: DAVID L. BENETAR, Esq., STANLEY SCHAIR, Esq., MARK H. LEEDS, Esq. *For the Plaintiffs.*

LOUIS J. LEFKOWITZ, *Attorney General of the State of New York*, Two World Trade Center, New York, New York 10047. By: MARIA L. MARCUS, Esq., NICHOLAS G. GARAUFIS, Esq., STUART GREENBERG, Esq. *For the Defendants.*

[80] Testimony of RAYMOND E. WILLIAMS; Direct Examination by Mr. Benetar:

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[86] Q. During 1971 how was collective bargaining with CWA conducted in the Bell System? A. Well, in 1971 and in the past years bargaining was conducted on what is referred to as a pattern bargaining concept. Under this concept the CWA International designated, normally, two companies in the Bell System as pattern setters. Usually these two companies were those with an early contract termination date and one was usually an operating company and one was one of the nationwide units, such as Longlines or Western Installation, and so forth.

In such negotiations the subject matters were generally referred to as either national or local. The national items would consist of those that had broad application to all Bell System non-management employees across the system, and the local items would be those that were pertinent to a specific bargaining unit and generally were in part of their contract language, et cetera. Now, national items would include things such as basic wages, union security, pensions, welfare and health payments, benefits, and where the local items would be more of a contract construction [87] and may involve things such as the application of overtime, board and lodging, travel allowances, grievance procedure, and so forth. In the pattern bargaining concept, where bargaining was taking place in a number of companies simultaneously, the key bargaining on the national items was taking place in so-called pattern setters and the companies that were not pattern setters generally looked to those companies to see what the settlement would be and once settlement was made, was reached in the so-

called pattern setters on the national items, they became the standard with which the other companies settled those items in conformity, and then bargaining would wrap up or continue on the local items, and so forth, and complete contracts would be obtained.

Q. I think you have told us that this had been the practice prior to 1971 and was the practice in 1971? A. That's correct.

Q. In 1971 which Bell System companies were selected by CWA as the pattern setters? A. The Chesapeake & Potomac Company and Western Electric Installation.

Q. And Chesapeake & Potomac was an operating company? A. That's correct.

Q. Similar to New York Telephone Company, in its [88] function? A. Yes.

Q. And Chesapeake & Potomac, was that a State-wide bargaining unit there? A. It was a multi-State.

Q. And Western Electric, was that a State-wide unit or broader in scope? A. No, it was Western Electric Installation, which covered the entire country.

Q. When were their collective bargaining agreements with CWA due to expire, that is, the two you just mentioned, C & P and Western? A. On April 30, 1971.

Q. When were the others due to expire, the other Bell System Company contracts? A. Well, many of them in 1971 expired on April 30 also, but then they were scattered throughout the late Spring and the early Summer months, with a few—I think a couple of them were September of 1971.

Q. When did the negotiations begin with the pattern setters? A. Western Electric Installation started on April 1 of 1971 and C & P on April 15.

Q. April 15? A. 1971.

[89] Q. Were agreements reached by the pattern setters prior to their contract expiration on April 30? A. No, they were not.

Q. What action was taken with respect to those contracts? A. Well, the contracts in those two units were mutually extended on a day-by-day basis until July 14, 1971.

Q. All right, we will come back to July 14 a little later.

Were similar extensions granted with respect to other Bell System contracts? A. Yes. All the contracts with CWA expired and were extended similarly on a day-to-day basis.

Q. Were any collective bargaining agreements reached between CWA and the Bell System companies before July 14, 1971? A. No, they were not.

Q. What occurred on that day? A. On July 14, 1971, the CWA began a nationwide strike against the Bell System and all the companies in which they represented employees.

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[94] Q. How were the ratification votes taken? A. By mail.

Q. Were they counted separately for each bargaining unit? A. Yes.

Q. So that in a company where the union had a national bargaining unit the majority across the nation would decide the question? A. On the nationwide units, yes.

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[97] Q. Were the CWA bargaining units for New York Telephone and Empire trying to obtain a more advantageous settlement for them than that which had been ratified

in every CWA unit throughout the country? A. Yes, they were.

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[98] Q. Was there a Bell System operating company in Rhode Island in 1971? A. Yes, New England Telephone & Telegraph.

Q. Approximately how many CWA-represented employees worked for New England Bell in 1971? A. About 965.

Q. Were they in two units? A. Yes, there were two distinct bargaining units. One was a directory advertising —clerical unit, which had about 830 employees, and one [99] was the directory advertising sales unit, which had 135.

Q. Did each bargaining unit of these two in New England Bell vote separately in its own collective bargaining unit with New England Bell? A. Yes, they did.

Q. Of the 830 in the clerical unit, approximately how many CWA-represented New England Bell employees worked in Rhode Island at that time? A. Four.

Q. Of the 135 in the sales unit, approximately how many CWA-represented New England Bell employees worked in Rhode Island? A. About 20.

Q. The vote of the entire unit in the entire local decided the question? A. Yes, it did.

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[100] Q. Did there ever come a time in bargaining after August 14 when the union submitted a new set of national and local demands, and I am talking about the CWA in their dealings with New York Telephone Company and Empire? A. Yes, we had a new list of demands submitted.

Q. I show you Exhibit 390 and ask you whether these are the demands you received? A. Yes, they are.

Q. Briefly summarize for the Court in what respects these demands differ from those in the contract settlement agreed upon by CWA but rejected in the ratification vote in New York, please. A. Well, they wanted—speaking of the demands, the demands called for greater premium payments for Saturday and Sunday work, substantial increase across the board in the basic wages. They wanted a full union shop versus a modified agency shop that was granted in the original July 18 contract. They were looking for more weeks of vacation with less years of service. They were also looking to upgrade, to higher wage level specific jobs, looking to include certain up-State cities in higher wage zones. They were also demanding increased payments to certain benefit funds. They wanted to—

Q. What do you mean by benefits. Are you talking about [101] hospitalization or other fringe benefits? A. Well, specifically, in 1971, at this time they were looking for payment on a dental plan and an eye prescription program and some type of drug prescription payments.

Q. All of these demands are different from the ones in the settlement? A. Yes, they are over and above what was in the settlement. They also in 1971—we bargained for the first time in July, what we referred to as the central city allowance, and the demands in August, 1971, wanted us to expand the geography covered by that—originally as bargained it was confined to just four boroughs in New York City and they wanted to extend it entirely down-State and they wanted a higher dollar allowance per day on that. Also in July of 1971 for the first time we in the Bell System bargained a cost of living clause and it was keyed

to rises in the U.S. Average City Consumer Price Index, and the CWA's demands in August of 1971, following failure to ratify, wanted to key the payment of escalator clauses to the local New Jersey, New York metropolitan region. On top of that, they had demands to restrict the company's ability to utilize overtime and there were other, what I will refer to as, non-economic demands in the area of [102] bargaining—contracting out bargaining unit work, grievance procedure, absence treatment, and so forth.

Q. Which of these increased demands which you have been summarizing for us were what you might call, in the parlance of your negotiations, national items? A. Well, the basic wage pattern, the cost of living, the Saturday and Sunday premium, vacations, the dental plan, eye prescriptions, drug prescriptions, and the benefits, those would be considered national.

Q. Did the company offer any increase over the pattern settlement during the remainder of 1971? A. No, we did not.

Q. Did there come a time when the settlement was finally reached? A. Yes.

Q. When and how did this come about? A. Well, in January of 1972 J. Curtis Counts, who was then Director of the Federal Mediation and Conciliation Service, entered the negotiations and through his efforts in early February of 1972 he proposed a settlement which the union agreed, the CWA International agreed to submit to their membership for ratification and which the company agreed they would support, and a ratification vote was taken and this proposal was ratified on February 16, 1972, and we executed [103] an agreement, a strike settlement agreement and

return to work stipulation the following day and the employees returned to work on February 18, 1972.

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[104] Q. On and after February 18, 1972, did the New York Telephone and Empire strikers return to their jobs? A. Yes, they did.

Q. By the way, on an average day during the strike, approximately how many New York Telephone Company employees remained away from work? A. About 30,000.

Q. And did Western Electric and AT&T long line employees in New York return to their jobs at the same time that New York Telco employees returned? A. Yes, they did.

Q. Now, I show you Exhibit 387. Was this the contract signed pursuant to the February 16th ratification? A. Yes, it is.

Q. And did that contract differ from the settlement which had been reached on July 18, 1971? A. Yes, it did.

Q. In what major respects did this contract differ from the original pattern settlement with CWA? A. Well, the major items contained some basic wage increases for certain job titles, certain occupational classifications, and certain locations, and it contained an agency shop provision of union security versus a modified agency shop provision [105] that was in the July 18, 1971, contract. And that's the first time we have had that provision in the Bell System. And we also had a provision of paying differential in this contract for Saturday work when it was a fifth scheduled day of the work week for any of our employees, and that was the first time we paid that type of allowance in the Bell System.

Q. Anywhere in the company, in the Bell System? A. Anywhere in the Bell System.

Q. The first time. A. Now, there were also some changes —these were the major changes. The other changes basically centered around overtime treatment, and it involved some restrictions or qualifications on the company about how much overtime could be assigned in a given week and advance notification on the assignment of overtime, and so forth.

Q. Was the wage increase a flat across the board amount or did it vary? A. No, the wage increase called for a specific dollar amount.

Q. How much? A. Well, it called for one dollar a week and top rate for the top two bands of job classifications, the two bands of the job classification we had paying the [106] greatest amount of money at that time, and that was applicable downstate, and it called for $1.50 for the same two job bandings upstate, but that did not mean that everybody within those bandings got that, it was only those people that were at maximum rate and then it kind of feathered down through a wage progression.

Q. These are above the July 18th settlement? A. Oh, absolutely.

Q. To your knowledge had ever previously a settlement been made with higher wages than those contained in the pattern settlement? A. No, not to my knowledge.

Q. Were there with any other national items, such as agency shop and differential pay for Saturdays? A. Not to my knowledge.

Q. These were break-throughs? A. Yes, they were.

Q. Now, was there any strike in the Bell System prior to the 1971-72 strike in New York State—withdrawn.

I think you have answered.

Are you aware of any attempt by strike in the Bell System prior to the 1971 to achieve a break-through on an agreed upon pattern settlement? A. No, I don't.

[107] Q. Now, before the strike period, in your capacity as assistant vice president for labor relations throughout the state, and later as director of labor relations for New York Telephone, have you kept yourself informed as to the statements of CWA and its locals on matters affecting labor management relations? A. I try to do so to the best of my ability.

Q. How do you keep yourself informed on these matters? A. Well, with the CWA, I have many face-to-face meetings on a going basis, or many telephone contacts with the officials of the CWA International, and/or even with some of the local people, the local officers of the various locals throughout the state from time to time. My job is totally from a corporate standpoint, however, functioned toward the CWA International. We have various communications, written communications, letters, letters of agreement, so I try and keep myself—as a matter of fact doing the daily job, you are kept informed of their daily attitudes even outside the bargaining years because of various contract provisions. We have maybe even, though, what may be considered bargaining sessions from time to time as the contract calls for negotiations of changes in job rates and so forth. So we have a lot of daily contact.

[108] Q. How about these recorded telephone messages; do you have any system of keeping yourself informed about them? A. Well, the recorded messages, which most of the locals have throughout the state, yes, I play a lot of them myself from time to time. It depends. If we are having

a particular problem I will play them myself a lot, play the calls myself from time to time, but we also as a procedure within the company where I get daily a transcript of what each of the tapes say. I get it and I have it distributed to certain other management people around the company, mainly down here in New York City. I think we might have 130-135 of these distributed every day to management people.

Q. Copies of them? A. Yes, complete sets of all the tapes of that day. Now, we don't—I guess my point is that if it does not change from day to day we only put those in that are new each day, but I get a packet of them every day.

Q. How do you obtain or learn the telephone number? A. The telephone numbers are well known. The telephone numbers are published in a lot of the local—the locals' publications, the Generator here in New York, 1109 News in Brooklyn. They publish the numbers so the employees [109] will know where they can call.

Q. Now, during the course of your relationship with the union and its officials, do you see many or most of the letters that the local unions send to their members? I am talking about open letters, not personal letters. A. Well, I get a lot of the CWA mailings. You know, I'm on the mailing list for, say, the CWA News, which is the international's monthly or bi-monthly newspaper issued from their Washington office. And I am on the mailing list for a lot of the local newspapers. They automatically put us on the mailing list because they find it advantageous for them too if we can stay abreast of some of the things that are of their concern, and so forth.

As far as other actual letters go, yes, from time to time

we see them, as I am sure they see ours if it is in our relationship. I don't mean to kind of take it literally. We have CWA letters or bulletins posted on our bulletin boards, or the members have them. So, we have access and see most of theirs as I am sure they see most of the ones that we issue.

Q. And what about the strike bulletins during the period of the strike, do those come to your attention? A. Yes, [110] we got copies of all of those, because many times they were distributed, or people on the picket lines, employees on the picket lines had them, and we would have access to them.

Q. Now, did you before coming to court go through, for example, the recorded messages that we had in our files? A. Yes, I did.

Q. And did you find that you had been quite familiar with their contents at the time the events were taking place? A. Certainly during the strike particularly. I not only had access to those but during the strike I played the tapes in good part myself.

Q. And others of the bulletins and letters that are put in evidence here? A. Yes, sir.

Q. Now, do you keep yourself informed in this manner in the regular course of the performance of your duties? A. Yes, I think I have to.

Q. During the 1971-72 CWA strike, did you become aware through union communications, or otherwise, that the strikers were receiving various forms of financial [111] assistance? A. Yes, I did.

Q. And what type of financial aid to strikers did you become aware of? A. Well, there were many communications on the unemployment payments, also many references

and communications regarding payments from the CWA Defense Fund, and directions and information concerning welfare payments, or food stamps, wherever applicable.

Q. From what source did you become aware of these facts—source or sources? A. Well, they were in some of the letters and some of the strike bulletins, but I think probably the main source to me was the reported messages that seemed to give the people direction as to the timing of making application and how they are to do it. I specifically recall that with the unemployment compensation they even told them what days to report by the last four digits of your Social Security number, so that the offices would not be overwhelmed by the numbers of people that might show up.

Q. Did you get any information on unemployment insurance payments from inside the company? A. Oh, yes. Sure, because I was aware of that constantly. One of my [112] coordinates, who was an assistant vice president at the time, had charge, among other things, of the unit that we have that process the unemployment insurance claims, and I was very close to him, and he kept me informed as to the level of the payments and the number of people receiving them, and he kind of kept me on a going daily basis aboard on where we stood.

Q. Did you say that this subject had come up on one occasion or more at the bargaining table, unemployment insurance payments? A. It came up on a couple of occasions I believe at the bargaining table.

Q. What information did you receive as to the extent of each form of aid received by the strikers? A. Well, I was aware very obviously from our own standpoint as to how many people, how many of our employees, were re-

ceiving unemployment compensation, the 29,000 or so, and that we ended up paying, I think in the New York fund, something around $43,000,000, and it was kind of an ongoing basis of what our payment was. There was not really as definite information perhaps on welfare and the food stamps. I never did see any dollar figures on either of those. I did note that at one time I heard or saw that perhaps a maximum of a thousand people received some type [113] of welfare fund. But I don't have the facts on those as I knew from—

Q. That was the highest estimate you ever heard? A. Yes, the highest one—maybe the only one—but it was the highest one by far.

As far as the CWA Defense Fund, of course on the local tapes, each local was saying how many people or how much money I think—more than tapes, recorded messages—as to how much they allotted to their members in the various locals on a going basis, and you could see as the strike kept—the longer the strike went, obviously the greater amount that was coming out of the CWA Defense Fund, and it was finally announced that the strike fund paid out something like $15,000,000. And I was also very aware of the fact that the strike fund stopped, in effect, paying any food assistance once people got the unemployment compensation. They kind of relied I think on the unemployment compensation.

Q. Did they announce when the unemployment insurance payments were to begin that no further food assistance would be given from the union strike fund? A. They did. So, this is the basic information that I had. I was very carefully aware of the fact that the unemployment insurance payments were the only really unconditional payments.

[114] I say that because with everything else, to get strike funds, you had to be on the picket line, and number 1, you had to also produce need, whether it was on mortgage money or car loans, something like that, as you would with welfare and the food stamps. It seemed to me the unemployment compensation became the whole basis because that was the only one that was unconditional there, and was available by the size of the fund and the number of the payments, the length that you could receive payments for a much longer period of time than the CWA Defense Fund could hold out because that was announced that—I think the CWA announced it was getting close to exhausting their defense fund.

Q. When? A. Near the end of the strike.

Q. Now, how did this subject of unemployment insurance benefits arise at the bargaining table? A. Well, I can't recall the exact date, but it was in early September when the employees became eligible for the initial payments, which I believe was an eight-week period, or seven weeks and seven days—but at the end of that period, in one of the bargaining sessions, Mr. Sanchez, who was the chairman of the union's bargaining team, took us on across the [115] table very angrily and said to the union's knowledge that the Telephone Company was attempting to postpone the payments of unemployment compensation, the initial payments of unemployment compensation, to any of the strikers. And he stated that the union was very upset about this, that Mr. Byrne, their president, president of the international, CWA international, had stated that the company would have the union at its throat for the next ten years if we tried to delay the initial payment of unemployment

compensation to the strikers. And he also said that this could mean real war between the company and the union.

Well, as a spokesman for the company team, I advised them I did not know or had any idea we were holding up these payments, but I would verify it, and at the next break that morning or afternoon, I got hold of the assistant vice president, this one I referred to previously, that had charge of this unit, and he advised me that no, the New York Telephone Company was not delaying the processing at all. As a matter of fact, he told me at that time they had already processed 25,000 claims and that there was no delay whatsoever. And we came back and advised the union bargaining team of that fact.

Q. I show you Exhibit 161 and ask you whether these are the minutes of the meeting where that came up.

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[116] The Witness: These are the company minutes. These indicate that—here is my response back to him on the 9th of September, in answer to his question about the—

Q. You don't have to repeat that. I just want to know whether those are the minutes kept by the company in connection with the meeting at which the event you have just described occurred? A. Yes, they are.

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[120] Q. Going forward from where we left off yesterday, do you know what the average pay of bargaining unit employees in the CWA, New York Telephone Company bargaining was before the strike? A. Yes, I do.

Q. What was it? A. The average straight time basic wages was $149.60 a week.

Q. What did that come to in take-home pay? A. It would have averaged about $120 a week.

Q. And they were receiving from unemployment insurance $75 a week? A. That's correct.

[121] Q. Were you called upon—

The Court: The average take-home was what?

The Witness: The gross was $149.60 a week and with deductions for tax, Social Security it averaged about $120 take-home.

The Court: Okay.

Q. Were you called upon from time to time in the course of your duties to estimate for the company the probable duration of the strike? A. Yes, I was.

Q. In what connection were you called on to do that? A. Well, it is an ongoing process. I think with any company on strike to attempt to evaluate and to balance the significance of what the issues are in the strike versus what the demands on a struck company are and attempt to balance those against what is the probable duration of not having our employees on the job.

Q. After the rejection vote of August 14th, I believe it was, 1971, is that right? A. That's right.

Q. Did the parties reconvene for negotiations, and when I say parties I mean the International Union and New York [122] Telephone Company? A. Yes, we did.

Q. At about September, 1971, after you reconvened and following the rejection of the pattern settlement did you in the course of your duties make a projection as to the

effect of unemployment insurance on the probable duration of the strike? A. Yes, we did.

Q. What was that projection? A. Well, we recommenced negotiations the last day or two of August or the first day of September, about the 1st of September, and this was coincidental pretty much with the expiration of the eight-week suspension period in which strikers would have to wait before becoming eligible for unemployment compensation. At the time we reconvened negotiations and we looked at the demands that we discussed yesterday and we realized that the strikers had already gone through eight weeks of strike without remuneration or financial assistance of any type and when we looked ahead and now they were receiving unemployment compensation it was our judgment that we are going to have a longer strike than what we anticipated initially. It was also my judgment that the strike could last a substantial period of time, hopefully perhaps it would end before the first of the year.

[123] Q. The first of the year of 1972? A. That's right.

Q. Did the company make a decision after that projection that it would settle at that time? A. The company made a decision it would not settle at that time.

Q. What factor or factors led to the decision not to settle at that time? A. After review of the situation, the new demands, the number of people we had out, all the factors you would normally consider during a strike, it was our decision that the principle that was at issue were the strike was just too important for us to accede to any of the demands, particularly those that had the national application of breaking the pattern, it was too necessary for us to stick to that princple. We decided that we would not yield to the strikers and that we would hold our position. On

top of this certainly our position still held that the offer that we had made on July 18th or the offer that was made and accepted but later rejected by the membership on July 18th was a very fair and reasonable offer and we felt that it met the needs of our employees and we were also guided somewhat by the fact that the international must have because they approved it and recommended ratification of [124] the offer.

Q. You mentioned in the course of your answer the consequences of a settlement at that time on the future. Would you be more explicit. A. The consequences were if we acceded to the demands particularly in these areas of the national demands that we would destroy pattern bargaining and if pattern bargaining were destroyed we would be in a whipsawing situation that could only lead to labor turmoil in both the Bell System and the New York Telephone Company. We felt that was the principle we had to defend and so we decided to continue to take the strike.

Q. After the first of the year in 1972 did you have occasion in the regular performance of your duties as chief negotiator to express your opinion as to the probable duration of the strike looking at it from that vantage point after the first of 1972? A. Yes, I did.

Q. What was your opinion at that time? A. Well, the first of the year had come and gone and there was no return to work movement which we may have anticipated earlier in the strike. And we saw or it was my judgment along with some other people in the companies that we would have no return to work movement without some movement on [125] the companies' part in the area of the demands of the union and we saw no reason to believe that the strike would end for at least another six months perhaps without

that movement on our part because the employees had not returned to work, they were still eligible for six plus months of unemployment compensation and we saw no reason that they would return to work.

Q. Would you say that the availability of unemployment insurance was an important factor in inducing the company to agree to settle along the lines of the mediator's recommendations? A. Yes, it was.

Q. What part did it play in your consideration? A. Well, as I said, in early January of 1972 we had already had six months of strike. We did not see an end to it—again I say an end to it by return to work without movement on our part so we sat there in our judgment still facing a long strike. By the same token after having been on strike for six months we began—we had felt that we were beginning to feel more severely the internal pressures that any company feels on strike. We were under pressure from the business communities in the various areas we serve around the state to end the strike and get back to a normal [126] operation. We had many businesses particularly urging us to end this strike because the one portion of the telephone industry that suffers most during a strike or perhaps even suffers at all to a great degree is that of installation. We try to take care of emergency installations but that is the part of the job that suffers the most. So we had many businesses now after six months on strike that had been unable to move and we had businesses that had built new buildings, had built new headquarters, they were unable to move, the leases were expiring where they were, we had other businesses that had expansion plans and they just weren't able to carry those plans out as long as we could not install telephones for them. So we were under

growing pressure as time went on to end the strike because we were in effect hurting business operations. On top of this as we went into the first of the year with no return to work and again facing a long strike we were aware that our balance in the New York Telephone Company's unemployment fund in the State of New York, which had started with well over $40,000,000 in it, considerably over $40,000,000 in it when the strike started, we were aware that that balance was going down very quickly and was approaching a negative balance and we were also aware that the same businesses that were concerned about our [127] inability to take care of their needs from an installation standpoint, that these very businesses as contributors to unemployment in the State of New York were also going to have to start paying for the strike of the New York Telephone Company. We kind of had a dual problem here that we were both not giving them service and at the same time we may be in a position or situation that they would have to support or pay for a strike at our company. This just put greater pressure on us. It was these considerations that led us to seek aid from the federal mediator to see if we could effect some type of settlement at that particular point in time. Unemployment was very important because that was the one key to our thinking that said the strike is going to continue for a prolonged period of time.

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[130] Cross Examination by Mrs. Marcus:

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[160] The Witness: When the strike first started, I think I stated yesterday, that we had about 38,000 people out [161] on strike.

As the strike continued, however, in the failure to ratify, the strike continued, we didn't have 38,000 people of the CWA unit out at that time. It averaged more about 30,000 at that period of time, that's what I want to clarify. . . .

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[180] Q. You stated that it was your impression that 30,000 employees rather than 38,000 were on strike on the average during the course of this period? A. Yes, I did. [181] Q. What do you base that estimate on? A. Well, during the negotiations, particularly the negotiations that started in—renegotiations really that start in late August, as a matter of regular business I had a report every day of how many people were working and how many people were not working.

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[187] Excerpts from Deposition Testimony of Communications Workers of America, by and through its Vice President, Morton Bahr, on Direct Examination by Mr. Schair; Read into the Trial Transcript by Mr. Schair:

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[189] "A. The negotiations with Bell are totally controlled by the President of CWA. No agreement can be signed with any Bell company without the President's specific approval. To follow through, the function that the Vice-Presidents, any one of the 12, may play may be of one to recommend.

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[190] "A. Well, up through 1971 we negotiated what was known as pattern bargaining where the President selected a specific bargaining unit within the Bell System to be a pattern setter. If the negotiations were pursued in the pattern setter and pretty much every Bell company marked time on those items which were uniformly applied throughout the Bell System until the pattern was established. The pattern is established when the International Executive Board says we have a contract subject to ratification.

"Q. Wasn't there a pattern setter chosen for the 1971 negotiations? A. Yes.

"Q. Do you know whom it was? A. Western Electric Installation."

Now to page 13, line 6:

"Q. How far back does this pattern approach to negotiations go in the Bell System so far as you know? A. As far back as I recall."

Page 14, line 4:

"Q. Do you know of any instance where an operating company struck to go above the pattern and did succeed in going above the pattern? A. New York is one.

"Q. When you say New York, you mean in 1971? A. [191] Yes.

"Q. Is there any other you know? A. There are strikes by non-CWA unions and Bell. I just don't recall what the settlements were.

"Q. I am just talking of CWA. A. I don't recall any."

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[193] "Q. Can a local go on strike without authorization of the International? A. Yes, but it would not be eligible for defense fund assistance and would actually be in violation of our constitution.

"Q. What other types of assistance does a defense fund grant during a strike? A. Mortgage payments, rent payments, installment payments on automobiles as long as the automobile wasn't purchased during the strike, furniture, appliances, uncovered medical costs, emergencies such as hot water boiler blowing up in the winter time, things of that nature."

"Q. Are these types of funds disbursed entirely on need? A. Need is the critical word in the defense fund rules.

"Q. What is the waiting period for this type of assistance? A. It varies. It is spelled out. It is 30 days, I believe, for rent and mortgage and 60 days for appliances.

"Q. Does the fund ever give outright grants of money [194] without a particular showing of need to all employees on strike, that is, other than grants for good? A. It does not unless you want to categorize one of the exhibits, a letter from President Beirne to the members, stating the International Executive Board by the two-thirds vote that is required to change the rules upon a strike did give a single grant at Christmastime of $50 per member. I forget the exact amount.

"Q. And that was during the 1971 strike? A. Yes."

Page 44:

"Q. In considering need, would they consider other sources of income? A. Yes.

"Q. Would they consider, for example, if a wife held a job? A. Yes.

"Q. Would they consider whether the striker had part-time work of his own? A. Yes.

"Q. Would they consider whether or not he was getting food stamps? A. Yes.

"Q. Would they consider whether or not he was getting [195] Unemployment checks? A. Yes.

"Q. All of these things would be considered which includes loans from friends, family, and banks? A. Yes, absolutely."

Page 46, line 5:

"Q. The local committee would make the initial determination of who gets and how much? A. Yes.

"Q. Do you know what type of proof of need an employer would have to show a local committee in order to get assistance? A. For example, on a car payment he would have to bring in the book. Before rent could be paid or a mortgage paid I believe an eviction notice was required. Medical payments it would be an actual bill from a doctor which could not be postponed. Wherever evidence could be expected to be furnished, it was."

Page 47, line 11:

"Q. Didn't the local community service committees also try, as part of their services, to steer the individual members to other sources of income other than the defense fund? For example, if they were eligible for food stamps they would tell them where to go? A. Yes, I assume so."

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[197] Page 52:

"Q. You indicated that there was some coordination between the AFL-CIO and the CWA with respect to food

stamps. Can you tell us what type of coordination? A. I am aware of one incident where members were complaining of red tape delay in not getting food stamps in certain parts of New York which I just do not remember. Mayes communicated this to Washington and there is a communication somewhere in one of the exhibits stating that discussions took place between our headquarters and the AFL-CIO. As a result of it, the United States Department of Agriculture moved in and assigned a person to see that the members got what they were entitled to.

"Q. Did the union also start various court actions with respect to food stamps and Welfare in New York? A. Yes.

"Q. Are you aware of any of these actions? A. Yes, I am aware of two such actions.

"Q. Could you describe the subject matter of the actions? A. Well, the union started one. The one the union started was in Suffolk County. It was a court suit against the Commissioner of Social Services in Suffolk County for [198] denial of food stamps and social service benefits to members who lived in Suffolk County. The other suit, much similar, was in the State Court in Onondaga County. It was either Commissioner Lascaris or the State who was the moving party. I just don't remember at the moment."

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[200] Page 60, line 12:

"Q. When was the first defense fund assistance given to employees in New York State during the 1971 strike? A. Shortly after August 26th.

"Q. And was food assistance given at that time? A. Yes.

"Q. Did it amount to approximately $30 per member?

A. I don't know. The only formula I remember was the $2 per day per member of the family.

"Q. Wasn't this food assistance cut off when unemployment insurance benefits were paid? A. Yes."

Page 61, line 13:

"Q. If members were not qualified for unemployment insurance, but qualified for other assistance, like welfare or food stamps, would their union food assistance also be cut off? A. There were no instructions from Mayes in that area. That would be a matter for the committee to make judgment as to the question of need.

"Q. But it was a uniform policy, that once you got unemployment insurance you no longer were able to get food assistance from the union? A. Yes.

[201] "Q. During the strike you testified that some employees, and you speculated possibly a thousand, might have collected welfare benefits from New York State, is that correct? A. Well, applied. Substantially less than that actually collected because of the suits. There is still a pending suit in Suffolk County for retroactive benefits.

"Q. But you don't know how many actually applied or how many collected, you are just guessing? A. That's right.

"Q. Do you know of any problem in collecting unemployment benefits from New York State during the strike? A. I don't know of any.

"Q. There was a problem on food stamps, is that correct? A. Yes.

"Q. And in that case the union enlisted the aid of the AFL-CIO Community Services Committee, is that correct? A. Yes."

Page 67, line—

"Q. Did the local unions in your district use telephone tape messages? A. Many, if not all of them, did.

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[203] "Q. Did they collect at some or all of these strikes welfare or food stamp benefits? A. I could respond as to New England, New Jersey. In that they were urged to do so.

"Q. Might they have collected in some of these other states? A. I would assume, if it is available, they would have collected it. Of course, the IBEW in particular, their strike fund gives a flat $25 a week, period.

"Q. It is not very much, is it? A. It is not very much at all, no."

Page 100, line 19:

"Q. By the way, the International did recommend approval of the settlement reached on July 18, 1971, is that correct? A. Yes.

"Q. And you felt it was a fair settlement? A. Yes."

Page 101, line 19:

"Q. Wasn't the stated purpose of the strike fund to allow the union to strengthen its position at the bargaining table and to have more effective strikes? A. Surely.

"Q. Well, how does it strengthen its position at the bar-[204] gaining table by having a strike fund? A. To take care of those necessities, to relieve the employee and his family of having these unnecessary worries. It is a morale factor.

"Q. Well, how does it affect the bargaining, the morale of the employees? A. The morale of the employees is a very viable and visible thing to the employer. You see, we

talk about negotiations in the Bell System. You can't just get away from it in this case. That was the tragic difficulty of this strike in that people were striking for things which were unattainable only because of the make-up of the Bell System. Even if the New York Telephone wanted to give it to them they couldn't.

"Q. But the ability to give strike funds to strikers does strengthen then the position of the union at the bargaining table, is that right? A. Yes.

"Q. Because it increases the morale of the employees? A. Yes.

"Q. By relieving them of certain financial hardships? A. Yes."

Page 103, line 10:

"Q. Didn't you state to the employees, after the strike [205] of 1971-1972, that one of the major factors in having the employees stay together and out for 228 days was the fact that you obtained benefits from the defense fund? A. Sure.

"Q. Isn't that another way of saying it made for a more effective strike? A. What it does is that in any large group of people there are the weak and the strong. What the existence of a defense fund does is eliminate the crutch that the weak employee may want to use as an excuse to return to work and generally he is the fellow who didn't want to go out at the outset, who followed the crowd."

Page 106, line 11:

"Q. Do you agree with the New York Times editorial and other comments that ultimately the settlement achieved in this strike, as far as the financial terms and so on, was not substantially better than the original offer? A. It

was not substantially better. I don't think there is any question about it when you measure the dollars and cents.

"Q. What was the difference in dollars? A. I will elaborate on it without too much delay. I think the major victory of this strike, which to some degree surprised me, [206] was that for the first time in the history of collective bargaining in the Bell System major items were changed of a Bell System nature, matters which could affect every employee in the Bell System.

"Q. Are you saying that they beat the pattern? A. I am talking about principle.

"Q. Is that what you are saying, they did better than the pattern settlement? A. What surprised me is that on matters of principle which didn't in itself mean many dollars at this point the Bell System did bend."

Page 108, line 3:

"Q. But these were matters of national bargaining, they would be able to get changed? A. These would have been things negotiated at a national level.

"Q. Yet they were able to change it in one unit of the Bell System, which is the unusual thing? A. That's correct. . . ."

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[240] Testimony of JULES BACKMAN; Direct Examination by Mr. Benetar:

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Q. Dr. Backman, please state your occupation. A. I am a research professor emeritus at New York University and a consulting economist.

Q. What titles have you held at New York University? A. Well, the usual run through of titles. I reached the

range of full professor in 1950. I was made research professor in 1960 and became emeritus at the end of the academic year of 1975.

Q. Please summarize briefly your educational background. A. I hold four degrees from New York University, baccalaureate in 1931, cum laude, M.A. 1932, M.B.A. 1933, doctor of commercial science in 1935.

Q. What are your principal affiliations with professional associations? A. I am a member of the American Economist Association, the Industrial Labor Relations Association and the American Statistical Association to which I was elected as an honorary fellow.

[241] Q. Have you specialized in any particular area or areas of economics? A. Yes, sir, several areas: labor economics, prices, antitrust and business economics.

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[242] Q. Have you ever testified, Dr. Backman, before any Congressional committees? A. I have.

Q. At whose behest did you testify before those committees? A. Always at the request of the chairman of the committee.

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[243] Q. Have you conducted research in the field of economics? A. I have.

Q. Have you ever been retained by the Government or by private parties to conduct economic research, evaluate the results of that research, and draw conclusions or submit recommendations concerning it? A. Very many times.

Q. Could you identify or would you identify some of the parties for which you conducted economic research? A. I have conducted economic research for organizations such

as the Brookings Institution in Washington, the American Enterprise Association, the National Industrial Conference Board. I made a number of industry studies, sometimes at the request of companies, at other times at the request of trade associations.

They have covered industries like the chemical industries, the railroads, cotton textiles, newspaper industry, advertising, potash, and a number of others.

[244] Q. To what extent was this research, economic research, in the labor field? A. I made a number of studies in the labor field, including studies of wage behavior, multiemployer bargaining, productivity, wage control, employment and unemployment, and, in addition to the studies that dealt directly with those subjects, in most of my industry studies there are chapters that deal with labor matters.

Usually there is a chapter on wages and fringe benefits and a chapter on productivity in the industry.

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Q. As a result of your research and analysis, did you [245] form an opinion as to whether the availability or payment of unemployment insurance to strikers in New York State has a significant impact on collective bargaining?

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[246] A. In my opinion, it does.

Q. Would you tell the Court in what respects, please, you found this impact to exert itself? A. The payment of unemployment insurance has an impact on the attitudes and positions of both parties in the collective bargaining negotiations.

On the management side, management perceives that down the road, in eight weeks, the position of employees will be strengthened by the receipt of sums of money which

cover most or all of their basic living costs, their essential living costs and it recognizes that this strengthens the ability of workers to hold out.

Management contends that as unemployment payments are made its position in the unemployment insurance fund is affected and therefore it may be subject to additional taxes because of the drain on the fund. This would be particularly true whereas a result of the operation of experience rating they were paying less than whatever the maximum rate may be.

On the employees and the union's side, it has a double impact. First, it affects the position of the union in that it reduces the drain on such strike funds as it has built up for the purposes of the particular strike, if it took place; [247] secondly, it improves the economic position of the worker and makes it possible for him to hold out. It increases his staying power for a longer period of time. In my judgment, this must affect the bargaining stance of both parties and, hence, affects collective bargaining.

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[250] A. Broadly speaking, the ability of workers to hold out in a strike situation depends upon the amount of liquid assets and the resources to which they have access, and the amount of resources that they may require will be determined by what we may characterize as the minimum essential spending, expenditures.

In other words, there are some types of expenditures that can be postponed, buying new furniture, carpeting, [251] or a new car, or items of that kind. They are postponable. There are other types of expenditures which are not postponable.

Q. Are you in a position to illustrate the points you have just made based on any of the literature in the field? A. Yes. There is ample literature that indicates that workers as well as people of moderate circumstances generally have very limited amounts of liquid assets.

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[254] A. . . . At page 103 of the 1969 Survey of Consumer Finances of the University of Michigan there appears a table, titled 66.

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This suggests that workers have a minimum amount of liquid assets that can be used to meet their on-going needs during a period of strike.

The Federal Reserve Bulletin for January, 1967, Exhibit 397, is a little more specific because at page 45 it shows [255] at the bottom of the page the employment status of the head of the household and the second category is "Employed by others," which, of course, would be the workers.

At about the middle of the table it shows all liquid assets of those who are listed as being employed in the year 1963, and the average at that time was $231. By any standards, the totals that are shown by both of these studies are relatively small and would not permit workers to be able to meet their ongoing needs for any period of time that is really of any importance.

Q. You have referred to tables published in 1969. Were there any comparable tables published as of a later date? A. To the best of our knowledge—and we attempted to find them—these were the latest figures. But that does not affect the—my conviction as to the significance of these

liquid assets, nor does it affect the numbers, because this historically has been the situation.

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[266] Q. What did you find in your research concerning the second factor, namely, the minimum needs for living expenses of workers? A. I examined the consumer price index, which is built around a study of workers' expenditures, and is prepared by the U.S. Department of Labor, U.S. Bureau of Labor Statistics.

In one of their publications titled Relative Importance of Components in the Consumer Price Index, December, 1974—

Q. Will you hold that just a moment, please.

Mr. Benetar: I would like to have marked for identification the portion of this document the witness is referring to and have it marked as Exhibit 399.

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[267] Q. Go ahead, Doctor. A. This publication shows the percentage of the workers' expenditures which was spent for various items. For example, food at home is shown as 19.657 per cent of his total expenditures.

I should say by way of prefatory comment that the budget does not include any income taxes. It does not include Federal, State or local income taxes, so that this is really a percentage of what he spent of what may be called his take-home pay after taxes.

I have examined the components and concluded that items such as food at home, shelter, gas and electricity, telephone, water, sewer, gasoline and motor oil, auto insurance rates, auto financing charges, local transit fares, drug and prescriptions, general physician office visits, newspapers and

cigarettes, are all part of what would generally be considered as absolutely essential expenditures.

I realize, of course, that there are ways of changing the food budget in times of need so that less could be spent than shown.

On the other hand, I didn't have a full measure of some types of continuing obligations like insurance, so that I [268] think the omissions and exclusions, for all practical purposes, would tend to cancel out.

In any event, these items account for 55 per cent of the budget. And so, to allow for questioned other items that might be included for one reason or another, I have reached the conclusion that about 60 per cent of the budget represents essential expenditures, which must be made in one way or another.

[269] The Court: Doctor, what you are saying is that if a person is operating on a take-home of 100 a week, in your judgment $60 of that is an irreducible minimum, by and large?

The Witness: By and large, yes, sir.

The Court: And the other 40 could, if necessary, be cut in times of a strike or otherwise?

The Witness: That's right. In fact, if the strike was relatively short, some of these payments, like the payments on car loans would be less important, they may not catch the date, but I put those in because it seemed to me there was no way I could determine whether or not it would be caught in that particular week.

On the other hand, when you come to items like durable goods or semi-durable goods, purchases can be postponed.

I am not saying that is always the most desirable situation, but it can be done.

There is recognition of that factor and of these numbers of about 55, 60 per cent in the literature. I think at a later point in my testimony I will cite in another context some of the data which show this is pretty widely regarded as the number that would be used.

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[272] By Mr. Benetar:

Q. Dr. Backman, did you draw any conclusions as to the impact of the economic factors you have just been discussing on the duration of strikes or the length of strikes? A. On the basis of these data, it seems clear to me that when a strike approaches or reaches the eighth week in New York, the ability of strikers to hold out is significantly increased if the resources made available to them through unemployment insurance is close to or approximates what [273] would be the minimum essential expenditures they would require.

It would seem to me that the ability to stand firm in terms of what a group of workers or a union was demanding is changed very dramatically when these funds become available.

Q. In your opinion, do unemployment insurance benefit payments in New York State cover the essential expenditures of workers as you have been describing it? A. Well, under the New York State law the worker is entitled to 50 per cent of his wage—not take-home pay, but whatever the contract earnings may be, which is before deduction of taxes. He is entitled to a maximum currently of $95.

On its face this would make it seem as though every worker earning up to and including $190 would be getting 50 per cent of his earnings. In fact, a worker, a married worker with two children who earns $190 would have to pay Social Security taxes of a little more than $11, Federal income taxes of about $17 and State taxes of about $3, assuming standard deductions.

So that he actually takes home something like $159. If he receives $95 on the basis of the 190 and his take-home pay was 159, he is then receiving about 60 per cent of his take-home pay. I made the calculations to see at what [274] point his take-home pay would be $190 so that he would be at the 50 per cent mark in terms of the equivalent take-home pay and that works out to about $230 a week.

In other words, workers earning up to $230 a week re-receive 50 per cent or more of their take-home pay in unemployment insurance.

Now, this understates the actual percentage of take-home pay because there is no allowance and deductions for union dues, no deduction or allowance in the event there is either an insurance or pension plan to which the employee contributes, no allowance made for trip costs to and from the job or such expenditures that may be involved for food.

So I think it, if anything, is a very conservative estimate of the percentage of his take-home pay which he would obtain.

If he gets 50 to 60 per cent of his take-home pay, and probably a little higher, and his essential expenditures are in the general neighborhood of 60 per cent, then it seems to me that either in its entirety, or very substantially, his essential expenditures are covered. I made no allowance for any other sources of income.

Q. What did your research reveal as pertinent to this [275] subject? A. There is some other interesting research that has been conducted by economists over the last few years. It has a very esoteric title "The Disincentives That Are Created by Unemployment Insurance." While these studies no not deal with strike situations, they deal with the ability of workers receiving unemployment insurance to hold out longer when he has been involuntarily unemployed in his efforts to obtain a job.

In other words, they indicate that, in effect, the degree of pressure, economic pressure, on him to find a job—I find there is a very direct analogy to the ability of workers to stay out and, if I may, in the economic report of the President for January 1976 they have a discussion of unemployment compensation and as part of that discussion it deals with this question of disincentives, and I quote from page 110 of this report, which is the official report issued from Washington:

"For most persons, however, the income support provided by the unemployment compensation system is a means of financing the search for a job. For these persons, if a longer period of unemployment facilitates job search and leads to a job with higher wages and better fringe benefits, more pleasant working conditions or a longer expected job tenure, it may represent a worthwhile investment." And [276] then from another paragraph:

"Partly because of the unemployment compensation benefits, workers would be less likely to seek other jobs during these periods of unemployment particularly if unemployment is widespread."

In other words, they recognize the typical situation and also the situation during a period such as the present time when a large-scale unemployment takes place.

Among the well-known economists—

The Court: What you are saying, Doctor, is that substantial compensation, according to some statistics, results in a person not really getting out and hustling for a new job, sort of taking a ride on that compensation for a while in a non-strike layoff situation and from that one could conclude that, a fortiori, if it has a non-incentive back-to-work basis in a normal layoff, it has the same or greater effect where the employee has willingly abandoned the work.

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[279] The Witness: . . . It seems to me that these studies, and there have been many others, all point to the same conclusion, and that is that if the magnitude of unemployment insurance is such that it permits a worker to hold [280] out before he takes a new job, where he is involuntarily unemployed, it must certainly have a similar effect where a worker is on strike. The relationship between needs and income is really the same kind of relationship in both cases.

Q. Doctor, did your research disclose any expression by unions which recognized the economic problem faced by their members in strike situations and what they do about it? A. Yes, sir, it did.

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[285] The Court: Let me ask the next question: How many such statements did you or do you have before you in arriving at the conclusion that you are about to express based upon an understanding of the union's position in this regard, 1, 2, 10, 15?

The Witness: I had planned to only cite three or four, but I have looked at dozens and dozens of these statements.

The Court: What is the general thrust of these statements?

The Witness: The general thrust of these statements, number one, unions in their preparations for strikes to an increasing degree, in fact pretty widespread today, seek all the information they can get, make all the plans that can be made to determine what sources of income will be available to striking workers during such a strike.

Secondly, they prepare pamphlets, prepare leaflets to distribute to their workers, they hold meetings, to alert them to the fact that these sources are available.

Thirdly, they use, in connection with welfare, people who [286] have been working on community funds and have the relationships to determine the proper mechanics, the way that one would follow in order to obtain this.

Fourth, they very often arrange for registration for some of these purposes to take place not in the Government agency's offices but at a union hall or some other convenient place, and that is not unique to strikes, it is done in other cases too, but they go through all of the preparation.

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[287] The Court: All he is telling me, and I don't want to spend a lot of time on it, that on the basis of this information he can reach a conclusion that unions look to every source of money available and take it into account in their plans and advise their members as to where it is available to them as part of their plans.

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[288] Q. Did you form any judgment as to whether the [289] unions take unemployment insurance into account in their collective bargaining strategy? A. Yes, sir, I did.

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Q. Would you refer to any particular item which you believe supports that conclusion? A. Well, I am not sure what I am supposed to refer to at this moment. I have seen reports in a variety of sources, of the GE strike, in which one local of a union stated specifically that—the New York local, Schenectady local, did not settle because they had unemployment insurance and that would seem to me to be a very specific idea of its effect upon strategy.

There are other areas where the payment of unemployment insurance has permitted the reduction of strike benefits by the union and this would seem to me to be illustrative of this kind of impact.

In the lists of items to which unions refer as having great significance, there is unemployment insurance—the classic case is General Motors, where they called out the tool [290] and die workers so that others would become eligible for strikes because they were involuntarily unemployed because the plants shut down, and with the tool and die workers out on the production workers couldn't work—

Q. You mean they became eligible for unemployment insurance? A. Yes.

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[291] Q. Did you observe any statements concerning unemployment insurance in connection with the Telephone Company strike by the union? A. Yes. There were a number of statements that are included in this record, if I can spot them, in which were detailed, as I recall, the number of days before unemployment would be available. In several of these documents they indicated the relationship between strike assistance and unemployment insurance and indicated that in the first week of unemployment insurance they wouldn't be getting their full amount and therefore they would be entitled to some of the food assistance and other types of strike assistance which the union was making available through its strike fund or its defense fund—

Q. You mean the strike fund allowance would be reduced when the unemployment insurance began to be paid? A. [292] That's right, they stated that specifically.

Q. Were there any statements made at the end of the strike about the impact of unemployment insurance that you took into account in your research? A. There was one summary statement—I don't have the exhibit number before me, but I believe it appeared in March 1973—in which the union in accounting—

Q. 1972. A. '72. In which the union in describing its relative success made reference to the unemployment insurance as an important factor.

Q. I call your attention to Exhibit 217 . . . .

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Did you observe any comment there pertinent to your inquiry? A. Well, the Wall Street Journal periodically makes what they call roundups of opinion, and this was such a roundup in which they quoted a number of labor leaders, indicating that labor leaders don't deny that welfare benefits make surviving a strike easier.

They call attention to Mr. Perlis, who argues that strikers should receive public aid if they don't meet the eligi-
[293] bility requirements, but if they qualify they shouldn't be discriminated against while on strike.

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[298] Q. Do you have an opinion as to whether the existence, availability and payment of Unemployment Insurance benefits have an impact on collective bargaining and the duration of strikes? A. I do.

Q. Do you have an opinion as to whether unions take into account the existence and availability of these Unemployment Insurance funds in planning their strike strategy? A. I do.

Q. In your opinion, does the availability and payment of these public funds of Unemployment Insurance have a bearing on the duration of strikes? A. It does.

Q. In what way? A. Well, there are several ways in which it affects tthe duration of strikes. Paradoxically, it affects it in opposite directions in some circumstances. Under some conditions the perception that the staying power of the union will be increased, the fact that the costs of Unemployment Compensation taxes would go up, factors of
[299] this kind, may induce, and I think does induce, some employers to settle earlier because they get concerned by what happens if they move past the eight-week period.

And so to this extent it can increase somewhat the earlier settlements.

As we pass over the eight-week barrier, the position, I think, becomes dramatically one-sided. The employee now has funds which are adequate or almost adequate to enable him to continue to get along. His staying power has increased very substantially.

The pressure he places on the union leaders becomes significantly reduced because of this factor. The willingness to make concessions is reduced because the pressure—after all, what is a strike? The strike is an instrumentality which creates pressures on both sides, and it is these pressures which ultimately lead to a settlement.

The employer, on the other hand, now sees the workers in effect being financed directly or indirectly out of the taxes which he has paid in, his Unemployment Insurance taxes; he sees a growing ability to hold out. He finds himself in a position where, unless he is ready to capitulate in some form, the strike will last longer.

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[302] Q. . . . [I]n your study of this subject did you
[303] find or come to any conclusions as to whether others than unions see the existence of Unemployment Insurance as a factor in the economic struggles that are represented by strikes? A. Well, both employers see it that way, and outside observers, that is, those that are not connected with either group, they are called neutrals, and I think that was the term used, have indicated in published documents of one form or another that they, too, see this as an important factor.

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[308] Q. From your familiarity with the field and in your opinion, do strike funds contribute to a union's strength in strike situations? A. They do.

Q. This may seem self-evident, but what is the purpose of a strike fund? A. It is to alleviate hardship that may be experienced by members of the union and the extent to which that hardship is alleviated varies very widely. I think I indicated earlier that the printers' unions are among the most generous in terms of strike funds they pay. In most of the other unions, the amounts are more nominal and very often are available to meet emergency needs.

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[309] Q. Did you find or do you find any relationship between Unemployment Insurance benefits and union strike funds? A. There have been situations where such a relationship did develop. For example, I ran across illustrations of strike benefits that were discontinued because Un-
[310] employment Insurance was received, so that the available strike funds could be used in other states. I found situations in New York where the strike funds were added to Unemployment Insurance, thus taking the total amounts received by workers far beyond the basic essentials and, in some instances, taking it up to practically their entire prestrike wage. There are relationships of this type which appear in various studies that I have examined.

• • • • •

[315] Q. Did your research disclose any expressions by unions of their views concerning the benefits as a factor in strengthening the strikers' position and a contributing factor to lengthening the duration of strikes, referring

to Unemployment Insurance benefits? A. I have run across statements by union leaders to that effect.

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[316] Q. Did you find any expression of employers' views on the availability of Unemployment Insurance benefits as a factor in strengthening the strikers' position and a contributing factor to lengthening the duration of strikers? A. Yes, sir, I did.

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[325] Q. Dr. Backman, were you asked by me to review the union communications arising out of the 1971-72 CWA strike against New York Telephone Company, which were marked as exhibits in this case. A. I was.

Q. Did you form any opinion as to the significance of their content in its relationship to the opinions you have expressed here today? A. Well, they supported, I think, completely the opinions that I have expressed.

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The Court: . . . Doctor, you are saying that reviewing the union documents, they supported which opinions, that they took the unemployment into consideration as a factor in the duration of the strike? Is that what you are saying?

The Witness: Yes, sir.

[326] The Court: Did they support any other specific opinions?

The Witness: Well, also in connection with its importance in collective bargaining and the relationship between unemployment insurance and other sources of income where

they referred to food assistance, for example, being reduced when unemployment insurance was being paid.

The Court: I see. Okay.

Q. And also in relation to the strike fund? A. Yes, sir.

Q. Tell us about that. A. For example, in Exhibit 152 they refer to unemployment compensation as a tremendous assist to members and then refer to the CWA defense fund, which was taking care of necessary payments for shelter and installment, and they say that the defense funds were being used in strict accordance with the rules and regulations of the union.

Q. Did you find a reference to unemployment insurance payments resulting in a reduction of strike benefits from the strike fund?

Well, to move that along, did you see Exhibit 147 (handing)? A. Yes. This says that no food assistance is to be given after September 7, 1971, and that food assistance [327] was coming from the defense strike fund. I had mentioned that but didn't relate it to the defense strike fund.

Q. Was there a reference to the same subject in Exhibit 26? A. Exhibit 26 says specifically, "We remind you that members are eligible for emergency food assistance under the CWA defense fund until such time as they receive unemployment checks."

Q. And, finally, did you look at Exhibit 65? A. In Exhibit 65 it says, "Next week most members should receive a full check from New York State unemployment. Food assistance will be only paid to those members who show an unemployment check in a lesser amount than their normal food assistance entitlement. Absolute proof will be required for an assistance."

Q. Turning to another subject, did you discuss with the other two experts for the plaintiffs in this case, Dr. Glasser and Perl, studies which they had made pertinent to the questions under discussion? A. I did.

Q. And how if at all, did these studies affect your own opinion in this matter? A. I saw these studies, I guess, sometime in January, early February, after I had reached my own conclusions, and they confirmed them.

[328] Q. Have you formed any opinion concerning whether or not the availability or payment of unemployment insurance benefits to strikers in New York State has a substantial impact on the subjects of collective barganing and strike settlements in New York State? A. Yes, sir, I did.

Q. State your opinion, please. A. Employers seeing the availability of unemployment insurance down the road, recognizing that the striker—or even before the strike, that the worker, if he went on strike would in time be able to receive substantial support from these sources, for which he pays through the unemployment insurance tax, and also recognizing that if the strike went beyond the eight weeks his reserves in the unemployment insurance fund would be reduced and, hence, his cost for the unemployment insurance tax would go up, is encouraged, if that is the right word, to make more liberal settlement in order to avoid the situation where his own position would be relatively weaker than that of the union. This would encourage some of the shorter strikes to which I referred earlier, but the price would be paid for it in the form of a more liberal settlement.

Q. In summary, or in conclusion, Dr. Backman, in your [329] opinion, does the availability or payment of unemployment insurance benefits in New York exert a substan-

tial impact on strikers and collective bargaining here? A. It does.

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[330] Cross Examination by Mrs. Marcus:

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[366] Q. You testified that unemployment insurance in some cases lengthens and in some cases shortens strikes, is that correct? A. Yes, ma'am.

Q. In the cases where strikes are shortened, what is the affect on the wage settlement on the supplementary benefits included in the settlement? A. I would think that in those cases a higher price had to be paid in order to abort the strike and therefore would act to increase the cost of settlements.

Q. In the cases where strikes are lengthened, what is the effect on the wage settlement and the supplementary benefits included in the settlement? A. I would think it would also increase the cost because the relative position of the union and the workers is considerably strengthened and in the usual interplay in collective bargaining this would suggest a more liberal settlement at a higher cost.

[367] Q. So then, Doctor, your conclusion is that whether UI has increased or decreased the length of strikes, wage settlements on the average will increase? A. I would think they would, yes.

Q. Do you have any data which shows that union wage rates increased more rapidly in New York State than in states without unemployment insurance? A. I don't have any such data and if there were any aggregate data available, they would be meaningless.

Q. You have no such data. To summarize again your testimony, you testified that UI increases the length of

work stoppages in some cases, decreases it in other cases, but in both a higher wage settlement would generally result? A. That's right.

Q. I show you the study by Dr. Perl which you said you reviewed and which you said supports your conclusions. Will you tell us for which industries did Dr. Perl find a statistically significant difference in strike lengths in New York and Rhode Island as opposed to other states? In which industries did he find that?

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[370] Q. I am talking about statistical significance at the 5 per cent level. A. What I find in these states it is 22 weeks and in other states it is 14 weeks, and I am looking now at public services, and that seems to me to be statistically significant.

Q. Did you look in his column where he has calculated the statistical significance? A. What he has done, he has set up a T statistic—

Q. Do you know what that is, Doctor? A. Well, in a general way. I do not pretend any special technical handling of these statistics—

Q. Let's take the non-electrical machinery. Do you have any data showing what wages in general—do you have any data showing that union wage rates increased more rapidly in that industry in New York and Rhode Island than elsewhere? A. There are no such data available.

Q. You have no data showing that wages in general, union or non-union, increased more rapidly in these industries in New York and Rhode Island than elsewhere? A. There are no meaningful data available.

[371] Q. I am going to show you the United States Department of Labor's handbook of labor statistics for 1975

and we are going to look at wage data for the non-electrical machinery industry . . . .

• • • • •

In other words, for one of the three industries which was found in the Perl study to be statistically significant the available data shows that the straight time hourly earnings rose more slowly in New York State than in all cities from the period of 1945 to 1973.

My first question is, why did you say there was no available wage data, and my second question is, how does this affect your theory, the fact that hourly wage earnings in that industry rose more slowly than in all cities?

• • • • •

[372] A. Your question did not ask me about the difference in straight time earnings, you asked me about difference in union wages in these different cities. That is number one. I said there were no figures like that available and I still say so. As far as these figures are concerned, the electrical machinery industry is an industry which is a mixed bag as far as unionization is concerned.

Some of the big companies are highly unionized, like General Electric, Westinghouse, and many other companies are not. These figures which purport to show the percentage wage increase are affected by some other factors which you did not mention in your question. All wages in New York, which has been a lagging area in the economy, have been affected vis-a-vis the the national averages.

You could take in this volume and look at the figures for the whole state and you will find they have lagged behind the economy. That doesn't mean that wages would not have been even further lagged in the absence of the developments to which I am referring, but New York State, New York City, which used to run above the average now [373] run below the average and that is a reflection of all these numbers.

I am assuming the calculations you made were right, they looked about right, and it is about what I would expect in other industries in New York and what I have found in other industries in New York. But this doesn't tell us anything about anything other than the fact that in that industry it lagged. It doesn't tell us what happened in strike situations, because this covers a whole lot more than strike situations. It covers the average for everything.

Q. Don't union wages affect the average? A. Union wages affect the average—

Q. How? A. They affect it by being one of the components in the average and to the extent that other non-union companies follow after a fashion, not necessarily directly, the increases can be greater or less. I would expect in the non-electrical machinery industry, which includes General Electric, which has a major presence, and, hence, is highly unionized, that you could have a lower increase for the union than for the non-union and, in fact, one of the reasons why the wage price guidelines broke down in the middle 1960's is the non-union workers were getting larger [374] increases than the large companies because the large companies, with a high degree of public visibility were following pretty closely the wage guidelines whereas others were not.

These figures cannot be used to answer the question you asked.

[375] Q. In other words, the union wages effect the average in what direction? A. They can effect it in either direction.

Q. They can pull it down? A. They can pull it down. They can push it up.

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[378] You will find that the CPI for New York from '47 to '74 increased 130.9 per cent and for all cities during that same time period 120.8 per cent. A. What years were those?

Q. This was for Buffalo, the data is from '64 to '74; for New York the data is '47 to '74. Therefore, although the consumer price index increased more in New York City and Buffalo than elsewhere, the straight hourly wage rate in non-electrical machinery increased less rapidly in New York City and Buffalo than in the all cities index; is that correct? A. The CPI, yes.

Q. Yes? A. Yes, it increased somewhat less rapidly.

Q. You testified that in those cases in which UI has caused shorter strikes it results in higher wage settlements? A. When I say higher wage settlements, I am including the whole package, of course.

Q. According to the Perl study there are 15 industries in which the mean length of stoppages are shorter in New [379] York and Rhode Island then elsewhere: metals, mineral mining, trucking, movies, schools, leather goods, other local government, printing, retail, air transportation, food, auto repairs, textiles, real estate, electrical machinery.

Have union wage rates increased faster in these industries in New York and Rhode Island than elsewhere? A. I haven't got the slightest idea.

Mr. Benetar: What?

The Witness: I have not got the slightest idea.

Q. Have wages in general increased faster in these industries in New York and Rhode Island than elsewhere? A. I think they have increased faster than in New York. I am not sure about Rhode Island.

Q. Where do you find that data? A. One can look at New York State published data for average hourly earnings.

Q. And you found that in the average hourly earnings? A. This is my recollection of the data.

Q. You recollect that it shows that it rose more rapidly? [380] A. In New York, no. Nationally.

Q. It rose more rapidly nationally or in New York? A. Nationally.

Q. In other words, it rose less rapidly in New York? A. I think that is the implication.

Q. I would like you to look in that same handbook at Table 97, page 236. We are going to look at the wage data for local transit in major New York State and Rhode Island cities.

You will find that the percentage increase in average union wage rates for '49 through '72 for local transit are as follows:

All cities, 250 per cent; Buffalo, 219.1; New York City, 292.2; Rochester, 248.9; Syracuse, 219.2; Providence, Rhode Island, 180 per cent.

So, in other words, of the major cities in New York State and Rhode Island only New York City had a higher percentage increase for this time period than the column headed "All Cities"—only New York in the transit area. A. Accepting your numbers.

Q. I will be happy to let you check them.

[381] Do you know that in New York State under the Taylor Law public employee strikes are prohibited and in fact penalized? A. They are supposed to be.

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You are also aware that Unemployment Insurance in New York is not given where a strike violates New York law; is that correct? A. I believe so.

Q. So that union wage rates, however, rose more rapidly in New York City in public transit than in all cities, despite the fact that those workers are not eligible for Unemployment Insurance? A. Between the dates that you selected.

Q. Would it surprise you to learn that—

Mr. Benetar: Excuse me. I think perhaps the Court may also take judicial notice—

The Court: Is this Mayor Lindsay's strike in the middle of these figures, Mayor Lindsay's transit strike?

Mr. Benetar: That is what I was going to say.

[382] The Court can take judicial notice that forbidden or not there have been plenty of strikes in the public employ.

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Q. Would it surprise you to learn that until 1970 local transit was privately owned in Buffalo, Rochester and Syracuse, and therefore strikers were eligible for Unemployment Insurance? A. No, it does not surprise me.

Q. But union wage rates rose more slowly in these cities than in all cities, as the figures that we have just gone over indicate? A. I thought I indicated that wages in New York had been lagging because of the lagging New York economy for the past two decades.

Q. Despite the help that this law would have given. But it is your speculation that they would have been even lower except for the law? A. I think they would have [383] lagged still more, that's right.

Q. But you have no data to support that? A. There are no data to support that.

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[390] Q. . . . [Y]ou testified before the wage stabilization board in a statement called Economic Position of the Steelworker, and you made the point quoting from current population reports, you made the point that:

"Many families have more than one wage earner or have some supplementary sources of income which are not easily ascertainable."

You cited marital and family characteristics of the labor force in the United States, March, 1950, current population reports labor force, Bureau of the Census.

Do you recall that testimony? A. Yes. And that's still true.

Q. And you concluded that "Approximately one-third of the households were estimated to have two or more persons in the labor force, and you said on the average there were

about 1.43 persons in the labor force per household, and applying this to steelworkers you said, if the average indicated above also applies to steelworkers, it seems clear that the average earnings of these families would exceed the BLS budget by a wide margin."

Do you think it is still true that that proportion of families have two or more persons in the labor force, that is, one-third of the households? A. I think that is probably [391] still true. I won't argue about a couple of percentage points either way.

Q. So that that would be another source of income? A. That could be a source of income.

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[391] Redirect Examination by Mr. Benetar:

Q. Dr. Backman, are there any characteristics of unemployment insurance benefits that are special to those benefits as distinguished from other public support? A. Well, the public support, welfare or food stamps or aid for dependent children, usually have some type of means test involved; that is, if you have more than a certain amount of assets, and they exclude from such assets ownership of a home, ownership of a car, if you have more than those assets you receive none of those benefits.

Unemployment insurance becomes, I guess you could say, a matter of right when the waiting period, whether it be for the involuntarily unemployed or the striker, is passed. In other words, when the one week goes by you are entitled to it, assuming you have met certain qualifications for work experience in the preceding period.

There is a second difference, and that is that management is alerted to the fact of unemployment insurance

[392] because before unemployment insurance is paid the agency checks with the company to make sure the individuals actually are employed. They must in effect certify to it.

So I think that's the difference. I think for many workers the unemployment insurance tends to be larger, although on the public support programs, if the worker has a large family, of course he can get more than the unemployment insurance. But except for those situations it would tend to be a larger item.

Until very recently, I guess there was another factor that played a role, there was a general stigma attached to taking welfare, food stamps. I don't think that is as much a factor today as it was maybe five, ten years ago, whereas unemployment insurance is in a different category in respect to that factor.

Q. You were asked some questions about the percentage of strikes in New York State lasting more than eight weeks. A. Yes, sir.

Q. Are you familiar with Exhibit 345? A. Yes, sir, I am.

Q. Would you tell the Court how the matter of length of strikes lasting more than eight weeks is reported by the Department of Labor of New York State? A. It is rather [393] interesting that the figure I used for 1970 is approximately the same as the figure that they cite for the average for 26 years. On page 18 it says, and I quote:

"About 9.8 per cent of all work stoppages during the 26 years from 1947 to 1972 lasted longer than eight weeks. The average covered 13.8 per cent of all workers and 51 per cent of the man days made idle."

Q. That last figure means that all the man days lost through strikes in New York State, 51.8 per cent were lost in strikes lasting more than eight weeks? A. That is 51.0 per cent.

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[429] Testimony of GERALD J. GLASSER; Cross Examination by Mrs. Marcus:

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[456] Q. You were the one who recommended that rather than studying people who had been on strike who had received unemployment insurance, you would take people in the general labor force? A. That's correct.

Q. And there was nothing in your experience which would have led you to believe that the questions which you asked, never mind the population for the moment—the questions which you asked would have been more salient and that the answers might have been different if you had picked a group who had actually been on strike or gotten unemployment insurance? A. Well, I gave some thought to that and I can give you some of the thinking that went into that. We thought not to do one at the exclusion of the other, or the other at the exclusion of the one, but to also entertain the idea of doing an experiential study and I must say that gave me difficult technical problems.

Number one, in terms of locating these people within the population that would be difficult to do a probability sample to detect people who had the experience Mrs. Marcus described.

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[460] Q. Your questionnaire did in fact make an attempt to ask a population which had been on strike— A. Correct.

Q. —these questions. And you said you abandoned that effort because with your random digit dialing method you

got only 25 persons who had actually been on strike, is that correct? A. Yes, I would have gotten only 25—I projected I would have gotten only about 25 by the time this study was done.

Q. How many in fact did you speak to from which you projected the 25? A. Eight.

Q. You spoke to eight and projected 25.

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[462] Q. The study was finished in September? A. The initial discussions, and this is from memory and I may be wrong, took place towards the end of 1974 and there were more discussions in the beginning of 1975, but it wasn't until July of 1975 that we actually went into the field and proceeded.

Q. You say it was finished in September 1975? A. I believe so, yes.

Q. Were there any strikes in New York which were taking place at the time that you either planned or executed this study? A. I do not know.

Q. Did you make any inquiry about it? A. No.

Q. Are you familiar with these publications of the New York State Department of Labor, as indicated on the cover, called "Labor News," and it is a regular publication of the department? A. I have never seen it before.

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Mrs. Marcus: I am reading from two things, "Labor [463] News Memorandum," volume XXXI, numbers 1 through 2, and this is dated January 14, 1976, but it is a regular series.

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Q. You will note that these bulletins contain the population and they also list the areas in which strikes are going on, how many workers are involved in these strikes—here is 4,770, 2,600, 1,170, and in this publication it tells the firm which is being struck and the date when the strike began, and so on.

This is publicly available information. So you made no attempt to inquire or look into such publications to determine whether a strike was taking place, how many people were involved in it or who was being struck? A. No.

Q. So you don't really have any scientific basis for coming to a conclusion about whether people who had previously been on strike and/or had previously received unemployment insurance during the strike would have agreed [464] or disagreed with the answers that you did get? A. Well, only based on the eight cases.

Q. Is that a statistically significant number, eight? A. No.

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[465] The Court: Does the fact that you don't have input from actual strikers, does that make your survey statistically unreliable? That is her question.

A. I don't think it makes it unreliable and inaccurate. It refers to different types of information. To the extent people who were interviewed, respondents among the 1200, some of them had strike experience and we don't know who they are but presumably they are in their proper proportion because we took a probability sampling.

To the extent attitudes are influenced by past experience, the information is experiential. They are in there in their "proper" proportion, that is to say, that we have people

who experienced strikes of eight weeks or longer in the survey in the proportion in which you would find them in the general population.

Q. In other words, the eight people, which you projected into 25 people? A. Yes.

Q. And that is because you took the labor force in general rather than taking a strike force? A. Yes. The thinking there was that it should be that kind of survey, a survey of the general population including not only people who had experienced strikes of eight weeks or longer but people [466] who for one reason or another may have been going on strikes that long but didn't because of the availability of unemployment insurance, or otherwise, and also to include people who may sometime in the future have that experience.

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[471] Q. You felt that questions about how strikers would react and vote could be validly asked of persons with no strike experience at all, but you skipped these people who had had it more than five years ago? A. That is correct. At one time we were asking about current attitudes, what are their attitudes and opinions as of today. In the other case we would be asking about their experience at some more or less remote point in the past.

Q. And their attitudes wouldn't be conditioned by those experiences? A. Might be. What is past is prologue.

Q. They would be less likely to have any attitudes than those with no strike experience at all? A. We included the attitudes and opinions of everyone in the labor force, those [472] that had strike experience five years ago, more, less, no strike experience. It was a general survey.

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[482] Q. Why did you use the words in that question on Table 2, "Enables strikers to hold out longer," which simply questions whether Unemployment Insurance is a resource [483] instead of directly asking a question that is, "Do employees strike longer if they receive Unemployment Insurance than they otherwise would?"? A. I guess the answer is I didn't think of it.

Q. In phrasing the question, why did you give only a part of the facts to the respondent rather than telling him $95 was a maximum and failing to disclose the minimum and leaving the respondent in this very brief telephone interview with the impression that perhaps all recipients received $95—

The Court: Does it make any difference why they did or didn't do something? Don't we have to deal with what they did?

Mrs. Marcus: That was a foundation for my next question.

Q. Do you think that the answers to the question would have been different if you had disclosed to them that there was a $95 maximum and that this would only go to people earning $190 or more per week? Do you think the answers would have been different had you given them that fact as well as the $95 fact which sticks in their mind in a very brief telephone interview? A. I honestly don't know, Mrs. Marcus.

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[487] Q. . . . Why did you phrase the question, that is, the questions repeated on these tables, so as to completely omit any self-help—which would you most likely seek, food stamps, your savings, help from relatives—why did you

omit self-help in that list of questions? A. In discussions with counsel, this seemed to be the sources of income they were interested in having information about.

Q. Why did you omit personal resources, like savings accounts? A. Same reason.

Q. And for the same reason you omitted other employment? A. Correct.

Q. And you, for the same reason, omitted the salaries of other working family members? A. Correct.

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[492] Q. All right. Since your questions on 8 through 10 convey a repetition of management's refusal to change its bargaining position over a two-month period, will the respondents' answers on tables 8 through 10 be at all influenced, in your opinion, by management's unchanged posture? A. This just refers to their answers to the simple situation that we put to them. It would be affected I'm sure by that, and maybe many other things, too.

Q. Doesn't the phrasing in terms of expected general behavior, instead of asking respondent what he would do, result in an answer which is removed from all the factors which exist in the real context? A. I don't know.

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[494] Testimony of HERMAN A. GRAY; Direct Examination by Mrs. Marcus:

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[496] A. . . . [I]n the fall of 1934 Governor Lehman appoint a tripartite committee to frame an unemployment act for the State of New York.

I was a member of that committee, and, as a matter of fact, was the sole draftsman of the New York State Unemployment Insurance Act.

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[508] Mrs. Marcus:

Q. Dr. Gray, did you have occasion to discuss during this period the State's interest in enacting this kind of statute? A. Of course. That was the whole purpose of the committee.

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The Witness: . . . May I also add that after the statute was enacted I was appointed by the Governor as a public representative of the advisory council, elected as Chairman [509] and I served for 14 years as an official, non-salaried, if you please, but nevertheless an important official associated with the administration of the Act.

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[512] The Court: What was the subject of discussion of the members of the committee on the State's interest in the proposed legislation?

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The Witness: We were confronted with major unemployment at that time. The period was 1934. There had been a great deal of propaganda going on throughout the country for an enactment of an Unemployment Insurance Act. As a matter of fact, the Federal law was then pending in Congress as well while we were discussing this Act. The Federal Social Security Act was under debate in Congress and it was for the purpose of dealing with the problem of unemployment via this mechanism of Unemployment Insurance that we met and it was a matter of vital concern to the people of the State.

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Q. What were the views of the employer members whom you have named with whom you consulted on the draft [513] provision?

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A. This particular employer group was committed, as we were, to the idea of setting up an Unemployment Insurance System, but when you get to dealing with the details of such a system there are a complex number of policy questions and, of course, each group, each individual, as a matter of fact, had his own view on some of these policy questions.

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[515] The Witness: The State had no position. We were appointed by the Governor to advise him and present legislation to him so that the Commissioner himself, who was the State, really, had no position.

The Court: Did your group in those discussions arrive at a suspension period of "seven consecutive weeks"?

The Witness: The original suspension was ten weeks. We arrived at that, yes.

The Court: What was the discussion and the reasons leading up to the arriving at a 10-week period?

The Witness: We started off with the very simple proposition that we are concerned with involuntary unemployment, and a man who is on strike cannot be said to be involuntarily unemployed. That very simple statement im- [516] mediately turned up, on looking at it, an enormous number of problems, because the union people immediately said, "Well, now, if you are going to deny benefits to a striker, what are you going to do to a man on lock-out? You can't say a man locked out is voluntarily unemployed."

Whereupon we largely, I might say myself, who is very much interested in the question of administration, raised

the question of who is going to determine the question and how do you determine the question. We were a group of rather practical people in the field of labor relations and we knew that it is sometimes impossible to know the difference between a strike and a lock-out. As arbitrator, I have been confronted again and again with problems where the employer comes in and says they struck and the union comes in and says no, it was a lock-out.

As a matter of fact, I recall as I talk to you now there was a case in Connecticut where in the middle of negotiations for a collective agreement the employer announced a unlateral decrease in wages and said, "As of Monday morning you have to come to work at these lower wages," and they walked out. The administrator of Unemployment Insurance said it was a lock-out and they would have to pay [517] benefits and the Court reversed the administrator and said no, it was a strike. Then along came the union people and said, "What if the strike is justified? Supposing the strike is in protest against a violation of law? Supposing the strike is because of a violation of an arbitrator's award?"

If you look at collective labor agreements, your Honor, you will find virtually all of them in the no-strike clause has a proviso that the no-strike clause is not to apply if the strike is because of a failure on the part of the employer to comply with an arbitrator's award.

All that meant was that some inexperienced clerk, who deals with Unemployment Insurance was going to be called upon to make an adjudication on very delicate and complex problems in labor relations. Neither side wanted that.

The employers backed away from that as the labor people backed away from it. But your problem doesn't end there,

your problem then goes on to the next and even more difficult question, what are you going to do about the people who are not involved in strike? If the lathe operators go out on strike, there is nothing, after a while, for the shipping clerks to do and you shut down the shipping depart-[518] ment. They had nothing to do with the strike, nothing to gain by the strike, so you would pay them, have to pay them as a matter of equity. If you start to do that, you open yourself up to the widest kind of manipulation. It is perfectly possible to pull one man out—on the West Coast, in California—

The Court: I understand.

The Witness: —they just pulled out the radio operator and the ships couldn't sail, but the real problem was with the crews, but the crews were not on strike and they were all paid.

Above all, we are concerned—you talk about the State interest, I myself, and in that respect the Industrial Commissioner was with me—we were concerned with a statute that could be administered effectively without too much bureaucracy. We knew that we were building a great bureaucratic machine and a complex one and we wanted to keep it down as much as we could. So everybody around the table backed away from the idea of having to determine these issues and that is how we came to this kind of statute which takes away all administrative adjudication. You don't try to determine why there is a labor dispute, whether it was strike, lock-out, justified, not justified; there is a labor dispute, period.

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[529] The Court: . . . I gather that the reason that strikers and those locked out are lumped together is that not that

they are necessarily identical, but that it would be just too difficult to administer this if you did not lump them together.

Am I right about that?

The Witness: Quite right.

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[541] Cross Examination by Mr. Benetar:

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[542] Q. Dr. Gray, you told us that it all started in a period of depression. A. Yes.

Q. Or low employment? A. That's right

Q. In about 1935? A. The agitation started long before that. As I said, Governor Roosevelt had already appointed a committee. That was the period of time, yes.

Q. And the idea was that there was a growing up-swell of feeling that there should be some reserves provided for [543] the voluntary unemployed, is that right? A. That's right.

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Q. I am sorry, I mean the involuntarily unemployed. A. I understood what you meant, yes.

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A. We were dealing with a method of financing the problem of unemployment.

Q. Involuntary unemployment? A. That's right.

Q. Do you recall writing an article in the New York University Law Review in 1935 when this legislation was either about to be or just had passed? A. I think I wrote that immediately after its enactment.

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[544] Q. Do you recall in that article saying, "In two cases, either where a job has been lost because of mis-

conduct in connection with the work or because of a strike, lock-out or other labor controversy, benefits will be paid only after a waiting period of ten weeks. There are some who would provide no benefits at all if the employment has ceased because of either of these two reasons."? A. That's right.

Q. And then you went on, "The danger of denying all benefits under such circumstance is obvious: It would tend to make employees subservient to their employers both be-[544] cause of the added disciplinary power it would give the latter and the check which it would put on strikes as a means for the improvement and protection of working conditions." Do you recall that? A. Yes. I still believe that.

Q. So that you felt, as this was written, that if the ten-week waiting period were eliminated and total disqualification followed for strikers, it would check them in their economic efforts to get improved working conditions? A. It would operate that way, yes.

Q. Do you recall also saying in the same article, "So in the case of a strike which is still being effectively conducted [545] after ten weeks (which would be unusual) the strikers would have to be available for work before they could claim benefits and they would have to accept jobs, if any were open. There is, therefore, little likelihood that the benefits would be used to finance a strike by maintaining the strikers in voluntary idleness." Do you remember saying that? A. I still believe that.

Q. In effect, you were telling your readership that there is no real fear that the payments of these benefits will help finance a strike or strikers in voluntary idleness because the number of strikes that are going to last that

long are really not— A. That was not the only "because." The other because is also important: Because they would have to search for work, they would have to leave the picket lines. A striker couldn't stand on a picket line and get unemployment insurance benefits, could he?

Q. But you referred in your sentence to this statement: "There is, therefore, little likelihood that the benefits"—you were talking about the payments there, weren't you? A. Yes.

Q. "—will be used to finance a strike by maintaining [546] the strikers in voluntary idleness"? A. Yes, that is still true.

Q. Did you become aware later that in fact strikes of this duration, or approximately this duration, were more numerous than you had anticipated? A. That is not the fact. I could not have become aware of something that is not the fact. The facts are to the contrary.

[546] Q. Do you recall that in 1946 you were the chairman of the New York State unemployment insurance advisory council? A. That's right.

Q. And you were a public member as well as chairman, were you not? A. The other way around: I was chairman because I was a public member.

Q. I will take it either way.

Do you recall that in one of your reports there was a section devoted to benefits during labor disputes in which you concurred, if you didn't write it, and six members of the advisory council, the three public and the three employer representatives, "Believe in principle that benefits should not be paid to strikers"—do you remember that? A. Yes.

[547] Q. "At present," you said, and this is as of 1946,

"benefits are paid after a seven-week suspension period." A. Right.

Q. Now, between that law review article and the time of this report the waiting period had been reduced from ten weeks, or nine weeks plus the customary week, to eight weeks— A. It depended on the standard waiting period. The seven weeks always remained seven. The lowering of the waiting period resulted from the lowering of the standard waiting period from three to one.

Q. The point of the matter is, regardless of how it happened, that when you wrote the first article there was a ten-week waiting period? A. That's right.

Q. And when you made this report it had been reduced to seven weeks? A. Right.

Q. Do you recall saying in this article, "When the law was amended in 1941 by reducing the suspension period from ten to seven weeks, it was argued that a shorter suspension period was warranted in view of the fact that the duration of strikes seldom, if ever, exceeded seven [548] weeks." Do you remember that? A. If it says so. I don't actually remember saying so, but if you are reading from something I said, well, of course I said it.

Q. So that at the time of the second article you were under the impression that there wouldn't be many strikes lasting more than seven weeks? A. I am still of that impression. I think the statistics will bear me out.

Q. Well, we will come to that.

"Recent experience," you said, "has demonstrated that many strikes have continued for periods beyond the seven weeks period." Do you remember that? A. Yes.

Q. Was that true and accurate, to the best of your knowledge, at the time you made the statement? A. Right. That was true in the immediate postwar period when there was a rash of strikes as wage controls disappeared, but that didn't last very long. The overall period of time, the overall statistical picture is such that the number of strikes which have lasted beyond seven weeks are infinitesimal.

Q. We will come to that. Let's stick to your report. [549] A. That's right.

Q. This report was to go to whom? A. This was a report that the advisory council was under a mandate to report to the Governor and the legislature annually and you are quoting from such a report.

Q. What was this intended to do, to influence legislative action? A. Not necessarily. It is hard to say. The legislature mandated a report and what I did with that report, when I was chairman, was to give it a character that could be used for research people as a continuing study of the operations of the unemployment insurance system, and that was the coloration I gave the report. What it is now, I don't know.

Q. Well, it, in any case, gave a true reflection of your state of mind and your state of knowledge at that time, is that right? A. Yes.

Q. "During 1946," you continued, "approximately $2.5 million in benefits was paid to about 51,000 persons unemployed because of strikes beyond the seven-week suspension period. In addition, about one-half million dollars was paid out under Section 600 to about 7,000 veterans." Do you recall that? A. I don't recall it, but you are

[550] reading from a document for which I am responsible, so obviously I must have said it.

Q. I want to go and see if you recall this: "The present provision of the law which permits the workers who voluntarily become unemployed because of a strike to receive benefits during the pendency of the strike runs counter to the objective of the law which 'compels our setting aside of financial reserves for the benefit of persons unemployed through no fault of their own.'" A. Yes, I said that.

Q. Did you believe it? A. I believe it now too.

Q. "It is also inconsistent with the policy laid down by the Congress in enacting the Federal servicemen's readjustment act, which expressly precludes the payment of readjustment allowances to veterans participating in a strike causing a work stoppage."

And now I would like to read you the last sentence of this paragraph: "Unemployment insurance benefits as such should not be used as an instrument for either party involved in a labor dispute." A. To what?

Q. Do you want me to repeat that? "Unemployment [551] insurance benefits as such should not be used as an instrument for either party involved in a labor dispute." A. Right.

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[554] Redirect Examination by Mrs. Marcus:

[556] A. . . . If you deny benefits to strikers—if there is anything in this business at all, and I discount this completely, really—if there is anything in this business, then you help the employer by denying benefits. So whatever

you do, you are in trouble. The whole difficulty here—basically I believe it runs counter to the principles of Unemployment Insurance. It has nothing to do with strikes, but the principle of Unemployment Insurance, to pay to a man who is voluntarily unemployed, but how do you avoid it—you can't avoid it without opening up a Pandora's Box and without creating problems in terms of State policy, which we better avoid, and that is why I voted with the rest of the committee for what is in the statute now.

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[562] The Court: You are saying that the denying of benefits would be a check on strikes. Would you amplify that you meant by that language, the denial of benefits puts a check on strikes?

The Witness: I am trying to think back as far as I can as to what I meant 40 years ago. It could only have been this: confronted with a loss of income you would have a check on strikes, and if there was a denial of benefits, the [563] check would be all the greater. . . .

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[568] The Court: Doctor, if you say that a denying of benefits is a check on strikes—

The Witness: That is what I said in 1935.

The Court: That means that it tends to restrict a strike.

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The Witness: Yes, of course.

[572] Testimony of MASON HAIRE; Direct Examination by MRS. MARCUS:

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[573] Q. Where are you employed? A. MIT, the Massachusetts Institute of Technology. MIT seems simpler.

Q. What is your title? A. I am a professor of psychology and organization behavior in our school of management.

Q. Can you give us a summary of your professional experience? A. I have taught at MIT now and before, I have taught at Harvard, I taught at Swarthmore College, I taught at the University of California in Berkeley in psychology and in industrial relations, usually jointly.

Q. Can you tell us in summary what you have published? A. I have published five books on psychological problems in industry and perhaps 100 articles, I'm not really sure of the number, but on that order, on related subjects.

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[574] A. I have been consultant to a good many companies and to branches of the United States Government, to other governments, to supranational organizations like ILO and UN branches and things of that sort, and two or three times to unions, much more often to companies than to unions.

Q. Have you been a consultant to any telephone companies? A. Yes. I have been a consultant to one or two or three operating companies, Pacific, I think New England Bell, but I can't be sure, and to the Bell Labs, the Bell Telephone Labs.

Q. Have you been a member or officer of any professional organization? A. Yes. I was, I think, regional

vice president of the Industrial Relations Research Association; fellow of the American Psychological Association.

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[576] Q. Now, does the assumption that man will always act in his own economic best interests, is that something that you deal with and is that something which meets empirical tests? A. It is something I deal with, certainly. It is something I have argued with my colleagues who are more pure economists. I have argued about that for 30 years, I guess.

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A. . . . There are in most cases of behavior in industry a variety of non-economic factors that influence the behavior.

Let me be clear about this because psychologists are often misunderstood. I do not mean that economic variables are of no importance but in most cases there are [577] a variety of non-economic variables that influence the behavior.

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[584] Q. Dr. Backman testified that management thinks that Unemployment Insurance strengthens the ability of workers to hold out in an industrial dispute.

Can you give us your opinion on that?

[585] A. My opinion would be that I would like to see behavioral data. I emphasized earlier that psychology is the study of behavior. I am not terribly moved by what somebody says he thinks a person's motivation was, and particularly when some hard data are available and could be available. I would like to see what the behavior was.

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[590] The Court: . . . Is that the kind of data that you might draw some inference from?

The Witness: That is the data—

The Court: A worker felt able to hold out in New York whereas he did not feel able to hold out in Ohio.

The Witness: This is some of the kind of data that I would want to consider, yes.

The Court: This kind of data, assuming my facts are correct, and that the vote was significantly different, that would be something that you might see certainly as a straw in the wind, to put it that way?

The Witness: Exactly.

The Court: As an industrial psychologist, and I assume psychology is psychology, regardless of its applications, there are certain essential principles that are applied in given situations, but if a person is on strike along with hundreds or thousands of others, and he is in the sixth week of a strike, for his weekly increase or fringe benefits, or what have you, if he is aware that he is going to get 50 per cent of his wages starting two weeks from now tax free, he has a different state of mind about hanging on then than if he has an absolutely blank future about when any money is coming in without going back to work; [591] isn't that essentially—that is psychologically valid, let me put it that way?

The Witness: I think that the fact that you state is no doubt true in many cases.

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[592] The Witness: . . . In cases where there is very great animosity on the part of the striking union, I can easily imagine a completely overriding—

The Court: Sure.

The Witness: That was all that I was going to illustrate.

The Court: What you are saying then is that in any strike there are factors and—

The Witness: A number of factors and the mix is different.

The Court: —and the mix is different.

If you have an animosity factor, or if you have a principle factor that is involved—and I use the word principle in the "p-l-e" sense—then that factor may be an overriding factor, economics be damned?

The Witness: Exactly.

The Court: I can certainly understand that as a psychological matter. But if you are solely in a wage increase factor, the workers want a wage increase, then I would think that psychologically it is valid that a person who knows that two weeks from today money is forthcoming [593] has a different attitude towards his present posture than somebody who sees no money down the pike unless he goes back to work.

The Witness: Yes. If you will excuse my quibbling one minute, when you speak of a strike in which the wage increase is the factor, I think very often the wage increase is a sanitary way to cover all of the factors; that is, it is a thing you can talk about.

Certainly we have a good deal of experience in related industrial situations that—to whatever extent antagonism exists between employer and employee, the more sanitary forms of the relationship, such as pay and things, are the things that get talked about, but are not necessarily the true motives.

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[595] A. If management thinks the payment of unemployment insurance will enable the workers to hold out longer, how would I assess that factor? Is that the question?

The Court: In their bargaining stance.

The Witness: If management is convinced that that is true, I think they might change their bargaining position. Whether or not it is true—I think it is characteristic of all of us, if we think something is true, we think there is a burglar under the bed.

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[596] A. I would not study only the statement of belief. The statement of belief comes from a variety of things; there are traditions, traditional ways of saying things and so on.

So I would certainly want to study the behavior of management. It might be a little hard to do, but yes, I would want to see the behavior.

Q. Which would be more significant in your view, the statement— A. The behavior, the behavior, without any question.

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[598] The Witness: . . . I don't say that money is of no important—it is.

On the other hand, in a variety of situations with complex motivational variables, I think other things might override the unemployment insurance as a factor in determining behavior in this kind of situation.

I hope that is responsive. I got somewhat mixed up about the question.

The Court: It is responsive. The problem with it is that you say something else might do something, and the

task that I have been given as the Court here is to determine whether or not this is a factor that improperly puts the state onto the scales in collective bargaining.

Therefore, whether, in any given instance some other factor might be more important is all well and good, if it is in fact present, but given the essence of what we have here, as I understand it, we have got to sort of take this in a vacuum, because only if we take it in a vacuum can we determine whether or not it is a factor, what weight it is given as a factor, how important it is as a factor; whether it is non-existent as a factor in some cases may depend upon, as I understand, other factors that may enter into it, but looking it square in the face, Doctor, if a [599] man is in the tenth week of a strike and for two weeks he has gotten half his pay and he knows he is going to get half his pay for another—what, 50 weeks, 48 weeks?

Mr. Benetar: 52.

The Court: Half pay for another 48 weeks, he feels a little different about things, right?

The Witness: Yes.

The Court: Without any question, I would think.

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[602] Mrs. Marcus: . . . Let's take management, or the claim that union representatives think that such and such is the effect of it.

I would like to know how he assesses that factor.

The Court: I think he answered that by saying if you think there is a burglar under the bed you are going to act in a particular way.

Mrs. Marcus: I think he also said that the behavior is what is most significant there rather than the—

The Court: I know, but the answer to your specific question is if you think there is a burglar under the bed you are going to call the police or jump out the window or something of that sort.

Mrs. Marcus: The question is do you call them? That is what I think he meant to point out.

The Court: Is the answer more involved than that? If management thinks it has an effect, then management is going to act as if it thinks it has an effect.

The Witness: That's correct. Whether it has an effect or not.

The Court: Whether it has an effect or not.

The Witness: Whether there is a burglar under the bed or not.

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[603] A. If I were charged somehow with determining the appropriateness of the New York State UI law, I would certainly want to study the behavior rather than the opinions.

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[604] The Court: Do you draw any conclusion, Doctor, from the fact that the union is advising its members of the availability of compensation as the time for it grows near, that it sets up machinery for the employees to get it, things of that kind? Do you draw any conclusions from that fact?

The Witness: The conclusion that I drew from reading [605] the whole bulk of that material was that it was not either an exhortation to do it, so the strike will work, or—and exalting "that we have it," but that it was providing

an administrative service, pointing out the existence of food stamps, welfare, maybe aid to dependent children, and UI; that it was more an administrative service to make sure that the things that are available were known to be available and how to do it rather than an exhortation to do it in order to consider the strike.

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[608] The Court: You would not expect there to be any reason for an announcement of the availability of compensation when the seventh week comes around and they are announcing a week from now it is available, you would not expect any sort of exaltant language in the announcement, would you?

The Witness: No. But I might have expected them to say, "Hold on boys because in another week we will get." [609] It is that kind of thing which I thought I conspicuously did not see.

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[622] Cross Examination by Mr. Benetar:

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[624] Q. There are three classes or levels of need. This was in your book "Psychology In Management." And you write them as (1) physical, such as food, water, sustenance, I suppose, tangible necessities; (2) social association with other people, affection and so forth; and (3) egoistic needs such as dominance, achievement and so forth.

Is that a pretty fair summary of your approach? A. Correct.

Q. And, of course, these levels of need exist in the context of the labor-management relationship as well as they do in the rest of real life? A. Correct.

Q. Now, you have also written that:

"Man does live by bread alone when there is no bread."

Do you recall that? A. I recall that.

Q. And where you see a worker or find a worker or observe a worker facing a strike, he is at that moment facing the possibility that his earnings are about to be cut off, [625] isn't that true? A. Right.

Q. And this means that unless he finds or has alternative means his bread will be threatened and if he is a family man the bread of his family as well? A. Right.

Q. Now, you have also observed in your book that this first level of need tends to crowd out the other levels where —perhaps I have an exact quotation. It is page 47.

> "However, if wages or the security of employment were threatened," you said, "the physical needs would quickly crowd to the head of the list in a position commensurate with their primary role in the human's make-up."

Is that a statement you still hold as a tenet in your psychological, scientific beliefs? A. Correct.

Q. Are you familiar enough with the labor-management scene to list for us the alternative financial resources or means that are available to a worker who is about to go on strike in the world as he sees it? A. When you speak of the labor-management scene, now you mean the broad scene, not just this specific case?

Q. The broad scene. A. Certainly one of the first is a [626] union's strike fund, often called a war chest. In different States there will be different laws with respect to

Welfare, aid to dependent children. Food stamps I guess are uniform. I am not positive of that. But food stamps and his own resources.

Let's see if I have made an exhaustive list. The war chest, aid to dependent children, Welfare, food stamps, his own resources and, where relevant, Unemployment Insurance. I don't guarantee that's exhaustive.

Q. Those are the ones that occur to you at the moment? A. Correct.

Q. And this worker, as he sees his world, about to go on strike, is going to lose his weekly earnings and he has these other places to draw from to meet his needs and those of his dependents, if he has any, right? A. Right.

Q. And his needs are going to play an important role in his thinking? A. Right.

Q. Now, do you believe that a worker in New York State who has been out of work for seven weeks on strike and he hasn't found alternate employment would be more or less likely to stay out longer if he knew that after eight [627] weeks he would get Unemployment Insurance?

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A. Depending on the reasons why he went on strike, that might or might not be a primary determinate.

Q. You said depending on the reasons why he went out. Where the issue is economic survival or livelihood at a level of maintenance no matter how average or how much pay may have dropped, haven't you said to us in effect that his primary need tends to crowd to the top of the list of needs? A. Yes, I have said it tends to.

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[630] The Court: Doctor, I am troubled by not getting what I feel is really a clearer answer on those two questions.

Let us assume that there is a worker who has had no income for seven weeks and he is married and he has two children, he is on strike with others for higher wages and higher fringe benefits. He is asked to continue the strike by the leaders.

His attitude toward continuing would be different, would it not, if he was aware that he would get half his income the following week from Compensation as opposed to a situation in which he would not get any income from any source of that kind in the future?

The Witness: I think so, your Honor.

The Court: Does that not tend to make him more receptive to a plea of the leaders to continue to strike?

The Witness: May I say, your Honor, that my answer that I think so is conditioned by your Honor's definition of the situation, particularly (a) that he has had no income for seven weeks and (b) that the strike was, in your hypo-[631] thetical case, purely an economic strike.

In those specific circumstances—

The Court: Let's suppose it wasn't an economic strike. What do you mean by a non-economic strike?

The Witness: A strike we spoke about earlier this morning where there might be great animosity or a matter of principle for which people would forego a certain amount. Now, if he had no income—

The Court: The principle being, for example, that a division was being transferred out of the State and they didn't want their neighbors to lose their jobs; are you talking about that kind of principle, is that it?

The Witness: There are a good many matters that you would call a matter of principle. A union shop might be a matter of principle in a particular negotiation.

The Court: Let's assume that. Let's assume a union shop. The worker would still tend to continue—it would be a factor in his tending to continue if he knew he was going to have half his income the following week is another principle? If he has a wife at home and two kids at home and they are down to the cheapest things she can get in a supermarket and they haven't driven their car and they haven't been to the movies, principle, economics or what-[632] ever the reason is, the fact that he is going to get half his income a week later makes him more amenable—Mr. Benetar's word was "tending to"—makes him more amenable to continuing the strike, isn't that so?

The Witness: I think that your Honor correctly said a person can be pushed far enough in the deprivation of physical sustenance so that that becomes almost completely overriding.

On the other hand, with some other support and very strong other needs it may not be. But in the kind of hypothetical case of which you speak he certainly can be pushed far enough. The man in the desert wants a glass of water long before he wants to be friendly with the first fellow he meets.

The Court: I wanted to be sure that given the cross-examination here, which I thought was a perfectly fair question, that we got an answer that squarely met him. I had a feeling we hadn't.

Now I gather that you would say that there is a tendency to make that worker more receptive to a plea to continue

to strike. That's all you are being asked to answer. I take it you would say there is such a tendency.

The Witness: There are conceivable circumstances under which that might be true, right. You were describing [633] hypothetical circumstances, your Honor, and asking me if it were true, and there are circumstances, yes.

The Court: For example, the hypothetical that I put to you is such a circumstance, I take it?

The Witness: Yes. The man hasn't had any salary for seven weeks and it is an economic strike.

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[634] Q. . . . If you were called in by a union and you were asked for some psychological guidance, perhaps in the area of communications to the union members, let's say, so as to maintain a strike and keep it solid, you know, stop any return-to-work movements, if you were called in in that situation, would you ask the union what resources their members could rely on in calling and maintaining the strike? A. I must say it wasn't the first thing I thought of doing, but it would probably be on the list. If I were trying to prolong the strike and advising the union, if I were a consultant, the first thing I would do would be to [635] explore the sources of group cohesion and the things that would tend to split the group off and then try to devise ways to hold them together, depending on what the situation was.

Q. I didn't ask you what the first thing was you would do. I didn't ask you that. A. I am sorry .

Q. I asked you whether you would inquire as to the sources of income of the workers, that is all I asked, but when you answer me that the first thing you would do

would be to examine into the sources of cohesion of the workers—is that your term? A. I think.

Q. —wouldn't that necessarily lead you into questions concerning what staying power they had economically? A. Yes, I think that would.

Q. And would you say, then, in all fairness, Dr. Haire, that if you were called in as a consultant, psychological consultant, in connection with a strike that was about to begin or had already been in progress, to advise them psychologically, among the sources of income that you would inquire about would be Unemployment Insurance, if it was [636] payable in that State? A. Yes, I think.

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[638] Q. The ascertainment of one's attitudes may be an index to his conduct or a guide, is that correct? A. Or a guide?

Q. Guide. A. Yes, it may be.

Q. And if you want to change his conduct, as I gather it from your book, one of the first things to do is to comprehend his attitude and if you want to change his conduct, to change his attitude; do I make myself plain? A. You make yourself plain, and there is no question but what in that book that was highly stressed.

Q. Do you mean by that remark that since you wrote the book you are questioning this? A. I only mean that since that time a good deal more work has come out which, quite interestingly, suggests the reverse course.

You are saying if you want to change the behavior, change the attitude. A good deal of work has come out that suggests if you want to change the attitude, change the behavior.

If I wrote that today, I might well modify the statement some, although I wouldn't deny the statement you have read.

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[649] Q. Let's go to 71, which I don't think is susceptible of this confusion.

This was issued on September the 3rd, or September 4, 1971—the 4th. Get the picture? This is shortly before the eight weeks period is about to expire. The union says to its members, "To all of you stalwarts who saw your duty and are doing it in the face of all the pressures, a ray of light has shown through. Members and non-members who have had the fortitude to stand their ground and who can hold their head high are now eligible for unemployment insurance."

The meaning of that was clear, wasn't it? A. Correct.

Q. And the union was saying to its members, "Those of you who held together . . ."—what was the word you used when you were describing what you were advised about, the cohesion— A. Cohesion.

Q. "Those of you who have been cohesive and stalwart, [650] you can hold your heads high because now you are eligible for unemployment insurance."

Would you consider that a statement of some significance, coming from the union to its members? A. I didn't read it, "You can hold your heads high because you are eligible for unemployment insurance"—

Q. It does not say that? A. I thought you said that.

Q. "And who can hold their head high, are now eligible for unemployment insurance." A. Yes.

Q. Did you consider that as significant, a significant statement by the union? A. I think that is not in the class that I was speaking of as administrative statements.

Q. Could we get to the affirmative rather than to the negative? Did you consider— A. Yes.

Q. Did you consider this a significant statement? A. Yes.

Q. And did you consider it a significant indication of the union's attitude that they saw a direct nexus between cohesion of their members on strike and unemployment insurance? A. I considered that as an item in weighing that [651] issue, yes.

Q. In the Rochester strike, I think you said you didn't see that, that 328 bulletin. A. I did not.

Q. There is a statement in here, "The company might want to spoil our Christmas but the members of Local 1170 CWA will march ten feet tall right through the holiday season and into unemployment insurance."

Now, here is another—

Mrs. Marcus: Can the witness see the whole document? I think the context is important.

A. I have seen it.

Mr. Benetar: I show it to him. If he wants it again, by all means.

Q. Do you see in here an attitude by the union of attaching importance to unemployment insurance in connection with their strike situation? A. Yes.

Q. Do you also begin to perceive from these statements not only that the union has an attitude but that they are seeking to influence their members' attitudes? A. I think these statements are examples of attempts to influence member's attitudes, yes.

[652] Q. To the belief that unemployment insurance will cushion the bumps in the road that will arise from a continued strike, if I can use that expression? A. Right.

Q. Is that correct? A. Correct. That is their thrust.

Q. Yes. Now, in Exhibit 165, I wonder if this is the editorial that you were talking about (handing to witness). A. Yes. This is the editorial that I was referring to.

Q. This came from a publication of the union, did you realize that? A. The Generator, yes.

Q. Did you take note of the statement that "New York Telephone would do well to pay the fund what it owes and commence preparations for our next contract, and, incidentally, better wages and benefits, instead of looking for ways to sabotage our strike weapon before we utilize it." A. I did.

Q. Did you notice that? A. Yes. That's why I referred to that editorial, but couldn't place it.

[653] Q. That was hardly an administrative guide. A. That's correct.

Q. That was—

The Court: Can I see that?

Q. That was an expression of the union's attitude that unemployment insurance is their strike weapon, isn't that right? A. That's what that editorial says, correct.

Q. Did you consider that a significant statement? A. Yes, I think that is a significant statement.

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Q. Are you beginning to perceive that there were more than two administrative guideline type of communications that were issued during the strike? A. More than two administrative guidelines?

Q. Type of communications that were issued during the strike.

Are you beginning to perceive that there were more than two that you mentioned? A. More than two what?

[654] Q. Communications that you lumped together as mere administrative guides. A. Could I be clear? I said I thought the big bulk were administrative guides. I mentioned a couple which I thought were not administrative. Let's you and I be clear about where the negative goes.

Q. You mentioned two. A. Right, which were not administrative.

Q. Are you beginning to perceive that there were more than two? A. Correct. The big bulk is on the other side.

Q. Did that cause you to discount the importance of the ones that I have been showing you, which you said you read? A. Not to discount the importance, but to take the whole proof as a whole, I think.

Q. If there was one document which called the unemployment insurance a strike weapon, did you feel that 100 tapes telling people where they could collect money wiped out the significance of the one that called it a strike weapon? A. I think they avoided an opportunity to emphasize that, if that was the point they wanted to emphasize, so that I guess I did discount it then because of the preponderance [655] on the other side. . . .

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[656] Q. In studying the papers in a case like this before coming to trial, did you accept his statement or did you apply a discount to it? A. I took the bulk of all the papers, as I have said before, that I have read, and I didn't really tabulate, but I had a kind of a rough assessment of how often this kind of point that you have just been reading was pushed and how often it was not in situations where it could very well have been.

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[689] WILLIAM H. MELODY, called as a witness after having been first duly sworn, testified as follows:

Direct Examination by Mrs. Marcus:

Q. Dr. Melody, where are you employed? A. I'm employed at the Annenburg School of Communications at the University of Pennsylvania, where I am associate professor of communications economics.

Q. Can you describe your work? A. I direct a graduate program of teaching and research in the areas of communications economics, Government regulation and public policy.

Q. What is your educational background? A. I have a bachelor of science, master of arts and PhD degrees; my [690] PhD is in economics.

Q. Can you summarize your professional experience? A. I have taught in the department of industrial administration at Iowa State University from 1963 to 1966; from 1966 until 1970 I was a senior economist at the Federal Communications Commission at Washington and—

Mr. Benetar: Which commission?

The Witness: Federal Communications Commission.

A. And from 1971 until the present time I have been at the University of Pennsylvania.

Q. What was the nature of your duties at the Federal Communications Commission? A. I performed in various capacities as an economist examining a number of regulatory problems dealing primarily with a wide range of

economic questions, including those emphasizing costing and pricing, in particular.

Q. Have you testified as a staff economist? A. Yes, I did, when I was at the Federal Communications Commission.

Q. In regard to what kind of policies? A. With regard to appropriate costing and pricing policies, in particular, for regulating telephone companies and particularly the American Telephone & Telegraph Company.

Q. Have you been a consultant to any organizations? [691] A. Yes. I have been a consultant to many organizations, mostly regulatory commissions: The Federal Communications Commission and state regulatory commissions. Also, I have been a consultant to corporations and other entities as well.

Q. Which corporations have you been a consultant to? A. I have been consultant with Communications Satellite Corporation, with the Data Transmission Company, Microwave Communications, Inc., Western Tele Communications and I am sure there are some others.

Q. Have you been a consultant to a union? A. No, I have not.

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[692] Q. What have you published? A. I am author, co-author or co-editor of several books and monographs as well as a multitude of articles.

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[705] Q. Examining the data on wages saved during the strike, which was supplied by Telco, what was the approximate total of such saving?

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A. . . . The summation there of the wages saved, I have made a calculation to determine the exact figure, would be approximately $199,000,000 for Telco for the months Janu- [706] ary, '71, to February, '72; for Empire it is $428,000; for A T & T the partial information that is listed there sums to approximately $2.8 million; and from I guess it is Exhibit 101, which has the similar information for Western Electric Company, that would sum to approximately $29.4 million; and if you sum Telco, Western, A T & T and Empire, it comes to approximately $231.5 million.

Q. Which would be wages saved during the strike by the four plaintiffs combined? A. Yes.

Q. Did Telco also supply data on overtime payments during the strike period? A. Yes, it did. I believe that is the answer to Interrogatory 10, parts (a)(4)(d), and again I have summed that information.

For Telco, and this is the summation of all parts, (a), (b), (c) and (d), for Telco the figure is $149.7 million, Western Electric approximately $6.2 million, A T & T approximately $4.2 million, Empire approximately $301,000; and that sums to approximately $160,000,000.

The Court: And that is what?

The Witness: This is the summation of overtime paid for management, overtime for non-supervisory employees and wages paid for employees borrowed and wages for extra [707] guards.

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[708] Q. And was the overtime paid during the strike significantly different from the trend before and after? A. Yes.

The Court: 15 as opposed to 160?

The Witness: Yes.

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Q. Have you compared the wages which were not paid by the company during the strike period with the additional overtime expended? A. On the basis of the information supplied, the—

Q. What is the difference? A. The relevant figures would be $231,000,000 for the wages and salaries that were not paid during the strike period, $160,000,000 for overtime [709] and payments paid out to management, non-supervisory employees and others.

If you subtract from that $15,000,000 as a rough indicator of norm that one would expect, you would arrive at a figure of approximately $86,000,000 as the difference between what was not paid because of the strike and what was actually incurred over and above the norm.

Q. In other words,—

The Court: In working up these figures, are you including all of these extras that creep into all of these things, in other words, the normal loadings that go on a wage, all the Social Security and all the Unemployment Compensation and all the Workmen's Comp. and all of those figures, are those all in there, too?

The Witness: I am accepting the company's data that has been supplied in response to the interrogatories. I made no attempt to go in back and collaborate to determine whether it was right or not. I just accepted the answers in the interrogatories.

The Court: What is it they are purporting to give in 9?

The Witness: 9(b), for example, is the most important one.

The Court: Apparently their Footnote 2 indicates there were factors that should be added in these calculations in

[710] some fashion: fringe benefits, medical plan, et cetera. formation I found here, I could find none.

The Witness: Yes.

The Court: I am trying to get an assessment here of what we are talking about.

The Witness: At best you can determine this as ballpark kinds of answers to the questions.

Q. From your examination of the documents supplied by the New York Telephone Company, did you see any indication that there were other expenses which were increased because of the strike? A. Other expenses that were increased out of the ordinary on the basis of the information I found here, I could find none.

Q. Have you also examined, aside from the data Telco supplied, A T & T's balance sheet and income statements concerning the New York Telephone Company filed with the SEC, the Securities and Exchange Commission, for the years 1970, 1971, 1972 and 1973 which are Defendants' Exhibits 42 through 47? A. Yes, I have examined these.

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[711] Q. Did you examine maintenance expense on this exhibit to see if there was any deviation from trend that might be attributed to the strike? A. I examined the information in the exhibit here and I could find nothing.

Q. Did you examine the depreciation accounts on this exhibit to see whether there was any deviation from trend that might be attributed to the strike on the depreciation [712] account? A. There was nothing that stood out in examining the depreciation account.

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[725] Cross Examination by Mr. Benetar:

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[736] Q. All right. Had this information, which you have mentioned in the questions to which you have answered you did not have the data, were it available would you wish to have it for the purpose of making a meaningful comparison between extra costs incurred as a consequence of the strike and payroll not paid because the men were not at [737] work? A. Absolutely, sir. In fact, so there is no misunderstanding, the data I used here was limited data; it is very imperfect. The purpose was to get a ball park estimate.

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[749] Testimony of HAROLD KASPER; Direct Examination by Mrs. Marcus:

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[759] The Court: Wait a minute. Let's go to a man who is out of work and applies for benefits. What do you do in terms of checking what his efforts are to obtain work, what his skills are, where he might work, and so on and so forth?

The Witness: He files an application with the unemployment insurance division and we have an employment service, so that we classify—rather, we refer that person to the employment service. The employment service takes a history of the work experience of the individual and applies an occupational code and tries to effect a placement as [760] soon as possible and the onus is on the claimant when he reports weekly or bi-weekly to us to let us know about his efforts to obtain employment.

If we feel that his efforts are not strenuous, we examine him in the insurance office.

The Court: What would you regard as a satisfactory effort?

The Witness: Well, this varies with the occupation, it varies with the situation. If a person has a regular employer to which he is returning, I must say in all honesty, that our efforts are not as great as with a person who has no allegiance with a particular employer and is out of work and seeking work.

The Court: When you say regular employer to whom he is returning, that means he is either struck or locked out?

The Witness: No. He may be laid off for three or four weeks.

The Court: Does that include struck or locked out?

The Witness: Yes.

The Court: So you require less effort from somebody struck or locked out than you do from somebody who has been discharged?

[761] The Witness: At least the unemployment insurance office. I cannot say what happens in the employment service. That person must be ready, willing and able to take a temporary job. One of the objectives of the unemployment insurance law is to keep a labor force for the employer in question so that if there is regular allegiance to that employer—maybe I am using a stupid term, "allegiance"—if that person is going back to his regular employment, I think you can see, Judge, that our efforts per force cannot be as strenuous as with a person who has no attachment to a particular employer and whom we would examine more carefully.

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[762] The Witness: . . . We would ask did he look for work last week, "Are you ready, willing and able, did you work last week?"

The Court: Suppose he says, "I went out on Wednesday and looked for work but the other four days I stayed home and watched television," what do you do then?

The Witness: He really doesn't tell us that.

The Court: Suppose he says, "I went out one day and looked for work," and doesn't tell you about the other four?

The Witness: Depending upon the demand for the occupation, we will scrutinize his response. Let me give you an example which I think is more to the point: We have typists, stenographers, bookkeepers who are on our rolls and they are in demand, and here is where we take extra effort knowing that these occupations are in demand, so that we require them to report to the employment service more frequently and they are scrutinized more carefully.

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[765] The Court: You do not expect people in the strike situation to go out looking for temporary work?

The Witness: Yes, we do, but, in all honesty, our checkup in the employment insurance office is not as great, but the employment service bears the brunt of making referrals.

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[768] The Court: What kind of situation is a fair hearing required in and what is the nature of the hearing?

The Witness: Well, suppose we disqualify a person for leaving a job without good cause—these are claimant hearings—

The Court: He claims he is fired and the employer claims [769] that he quit.

The Witness: Under our law, we think we have a very decent system, quasi-judicial system, where we set up an impartial referee who does not report to that Department of Labor but to an independent unemployment insurance board whose members are appointed by the Government.

The claimant says, "Look, you are full of dash. I want a hearing." So he goes to the impartial referee. The impartial referee—

The Court: Is this referee a lawyer, by the way?

The Witness: Yes, it is a requirement that he be a lawyer.

The impartial referee either upholds the claimant or objects. If he upholds, we have the right to take the case one step further. The one step further is the unemployment insurance appeal board itself. So you go from the impartial referee to the unemployment appeal board, a board of three members appointed by the Governor—

The Court: Are they lawyers?

The Witness: Yes. All right, we go to the appeal board and now we are not satisfied, as the state, or the claimant is not satisfied and now there is an appeal to the [770] Courts, Third Appellate Division, and the State Court—

The Court: This is the third department that covers Albany?

The Witness: Yes. And of course the final recourse is the Court of Appeals and we have had cases of that type.

The Court: These referees, are they from a panel of referees that are always available to serve or are they designated as the situation requires?

The Witness: As the situation requires—well, both. There are panels and a referee has a calendar of, say, eight to ten cases a day and in special cases the referee with more expertise is assigned to the case.

The Court: These referees are sitting as a regular matter?

The Witness: Yes.

The Court: Do they take testimony?

The Witness: Yes.

The Court: If necessary?

The Witness: Yes, rules of testimony.

The Court: And witnesses are sworn and testimony is taken and the record is kept?

The Witness: Absolutely.

[771] The Court: So that if an employee claims that he was fired and the employer claims he quit, everybody here can put on witnesses and the testimony is taken and an opinion is rendered?

The Witness: That's right.

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[776] A. We did test studies and as I remember the figures, 75 per cent of the Telephone Company employees were getting the maximum benefit rate of $75.

I think AT&T Long Lines amounted to about 60 or 65 per cent, and Western Electric jumped to 86 per cent of claimants receiving the maximum benefit rate.

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[777] Q. How long would the employees at New York Telephone have continued to be eligible for benefits had they not accepted the company's offer in February, 1972?

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Q. So that would take them into July? A. Yes.

Mr. Benetar: Of '72?

The Witness: '72, that's correct.

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[791] The Witness: . . . The objectives of the statute—[792] the most important objectives are at least threefold:

One, we play a definite role in cushioning the economy. In 1975, for example, we paid out, New York State alone, 2.2 billion dollars in benefits, all programs.

If you take this on a national basis, it amounts to about 20 billion dollars.

The Court: Cushioning the economy. What is next?

The Witness: This money is not saved. These are hot dollars, they are velocity dollars, they are spread out in the economy; they pay the butcher, baker—I used to say the candlestickmaker, but now I say the electric company, and I include the New York Telephone Company.

So the other side of the coin is to aid the person who is out of work to pay his essential expenses.

[808] Cross Examination by Mr. Benetar:

Q. Mr. Kasper, you told us that unions and employers alike request speakers from your department or division from time to time, is that right? A. Yes.

Q. Talking about employers now, when they request it, do you try to provide them with a program that will enlighten them as to the benefits payable under the law? A. Yes.

Q. What their workers will get if they are laid off, right? A. Yes.

Q. And do you also enlighten them about what their [809] workers will get if there is a strike? A. Yes.

Q. And what the range of benefits is? A. Yes.

Q. And they show interest in knowing all these things? A. Yes.

Q. Isn't that true? A. Absolutely.

Q. You mentioned the name of a lady who works at the Telephone Company, Lillian Layton, from which I drew the inference that you perhaps know that she is part of a department— A. Yes.

Q. —that the Telephone Company maintains, year in and year out, to monitor unemployment insurance claims? A. A very competent department, a very competent person.

Q. And they watch for meritorious claims being processed and paid and unmeritorious claims being resisted, is that correct? A. Yes.

Q. Would you say that among employers they have shown a special familiarity with the law and its adminis- [810] tration? A. Absolutely.

Q. And pay special attention to what is happening to their unemployment insurance account? A. Absolutely.

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[814] Q. There are many staff full-time referees, are there not? A. Yes.

Q. They are called upon from time to time to resolve [815] hotly contested issues of fact, isn't that right? A. Yes.

Q. And sometimes the issues involve rather subtle questions of fact, isn't that true? A. Yes.

Q. For example, are there cases where an employee is discharged by his employer allegedly for cause and where he claims he was discharged for discriminatory reasons, by reason of race? A. Yes.

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Q. And they are a body of experienced men? A. Yes.

[816] Q. Then there is an appellate division, I think you have told us— A. Appeal board. It is not an appellate division, unemployment insurance appeal board.

Q. How many persons are on that board? A. Three members—wait a moment. I think I misspoke. I think they enlarged it to five. I think it is now a five-man board.

Q. And this board is set up to hear appeals from the determination made by the referee in this supposititious case I gave you involving the claim of good cause or discrimination? A. Yes, either upon the objection of the claimant or of the state.

Q. Is there a stenographic record taken? A. Yes, either that or we have these record players now.

Q. Briefs are sometimes submitted? A. Yes.

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[817] Q. Where does the money come from to pay the claims chargeable to the employer with a negative account? A. Of course it comes from the unemployment insurance fund.

Q. What is the designation of that fund? A. The state [818] unemployment insurance fund.

Q. How is that fund made up? A. Made up from taxes from employers.

Q. Employers. And the Federal Government, I believe you told us, pays the administrative costs? A. Yes.

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[822] The Court: I would assume, Mr. Kasper, that temporary work was much harder to find than permanent work?

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The Witness: . . . [T]emporary jobs would be more difficult to get.

The Court: As to workers on strike, they are only required to be looking for temporary work?

The Witness: That is correct.

The Court: Who made that decision? Who established that rule? Is that some regulation?

The Witness: By the judicial process. Through our referee and appeal board decisions, which have the effect of law, this came into practice. I am not aware of any Court decision personally on this issue.

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[830] Q. Do you perceive under point 2 an objective of the statute is to aid strikers to pay their essential expenses when the strike exceeds eight weeks? A. Yes, I do.

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[832] The Witness: . . . So after eight weeks a person still has to eat, has to pay his non-deferred expenses, he has to eat, pay groceries, pay rent, pay electric bills.

The State has assumed a neutrality for eight weeks and stood aside, so to speak, hands off, because it has been our experience that most strikes have been settled in that time.

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The Witness: Now we say he is as entitled as anybody else for a stipend to take care of his non-deferrable expenses because the State has been neutral, in effect, for 11 weeks, not only 8 weeks of neutrality.

The Court: Let me put a question to you and then think [833] on this very carefully:

Does the State cease to become neutral in the ninth week?

The Witness: I don't think so. My own opinion is that they don't.

The Court: The State continues to be neutral?

The Witness: It has evidenced the neutrality, and I must again refer back to the basic objective of the Unemployment Insurance law, to provide for non-deferrable expenses, and that after eight weeks positions have hardened and the amount of benefits that would be paid won't settle the strike either way.

It is a question now of providing some stipends to these people who are out of work and who need to take care of their non-deferrable expenses.

The Court: Let us keep in mind that in the ninth week the worker could theoretically get a hundred per cent of his pay plus whatever additional amounts in this case were offered by going back to work, and you have the situation where, as a condition of paying compensation, a worker is required to seek work elsewhere, or in your strike situation, temporary work, because you say that a reason you only demand temporary work in a strike situation is that you want to hold the labor force intact to return it to the [834] employer, am I right?

The Witness: Yes.

The Court: Whether or not that is inconsistent with what you should be doing is another question, but you have a little bit of an inconsistency in that a person who could go back to work and get his full wage plus whatever the extra increments are that are on the table does not do it, and yet you say you are still neutral when you pay enabling the person not to do that?

The Witness: I understand your question, Judge. Really it goes to the heart of the issue. What I am saying—

The Court: It does, that is why I want you to think very carefully on what you are saying here.

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[835] The Court: Please listen very carefully to me. I phrase these questions carefully. I may be a judge now, but for 23 years I was a trial lawyer. I am accustomed to phrasing my questions very carefully.

You say you were neutral through eight weeks and in the ninth week you come in and you begin to pay. That is fact.

The Witness: This is so.

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[838] The Witness: . . . It is true that when you are talking about the total amount that is paid out to strikers versus the total amount of moneys it is not large, but to the individuals concerned, both the merchants involved and the individuals involved, I don't see how we could do anything else.

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[843] Testimony of MORTON BAHR; Direct Examination by Mrs. Marcus:

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[847] A. . . . We had, really, from the period of 1958 right up through the time of 1971, the 1971 contract, a constant [848] period of turmoil, and the turmoil was between the locals and the international, between the locals and the company and, to some extent, between the international and the company. . . .

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Q. What were some of the other factors which may have contributed to this turmoil which you described? A. We had a wholesale defection of our largest local union to the Teamsters, which required us putting the local union into receivership. All during this period the total number of grievances that were handled between the local unions and the company and the international union and the company far exceeded that of any other Bell System Company in a like period for a like number of employees.

[849] Q. Were there also lawsuits filed during that period? A. Yes, there were several lawsuits and the most recent one, in relation to the 1971 contract, took place just prior to that contract, where the Court fined—there were total fines issued against the international, the local union and one individual personally of almost $2 million, and that was just prior to the contract, which later was reversed on appeal.

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[850] Q. How long has this pattern setting procedure been used in the Bell System? A. I would have to guess it was—my best recollection would be back in the early '50's.

Q. Would bargaining in the various AT&T subsidiaries continue while the pattern bargaining was occurring? A. Yes, but it would be kind of a holding operation. There would be meetings.

Q. Who chose the pattern setting unit? A. The president of CWA, with the concurrence of the international executive board.

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[862] A. We believed it was—that it was a fair contract. It did not contain all of those things we would have liked to have. We did not believe that it warranted having a strike continue, and as a result of the local presidents in New York Telephone coming out opposed to it and urging the rejection, I personally wrote several letters to all of the members recommending that they ratify the contract.

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[865] By Mrs. Marcus:

Q. Mr. Bahr, I read you now portions of these exhibits relating to the New York Telephone Company strike.

One from John Renck, president of Local 1106, which says the following—this is Exhibit 36.

> "I contend further that the five other elected members of the unions bargaining committee agree with my position. I or any other member of the elected bargaining team did not sign or in any other manner accept the New York Telephone Company's last offer for submission to the rank and file of the New York plant bargaining unit.

> "We never had a proper opportunity to negotiate the plant contract and that is the reason why we are unanimously urging its rejection."

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[866] "The New York State presidents have requested me as chairman of their plant coordinating council to formally request the Attorney General of the State of New York to investigate the possibility of collusion between CWA and the New York Telephone Company to keep us away from the bargaining table."

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[870] The Witness: See, these tapes—the messages on these tapes were also sent to me directly, and they protested very vehemently that they did not have the same right that other bargaining committees did around the Bell System of [871] having an equal time to sit at the bargaining table and negotiate on those items that they felt important.

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[882] Q. What were the critical local issues in July 1971?

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A. Well, there were many. The initial non-economic demands included matters such as supervisors performing bargaining unit work, matters such as the indiscriminate assignment of overtime to people without regard to their personal affairs, and I am not talking about emergency type situations, because our record is without parallel in emergency types.

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[893] The Witness: . . . [T]his was the first contract in Bell that provided for a cost of living allowance clause, the

1971 contract, and it was based on the national consumer price index.

The period up to 1971 and for several years prior to 1971, the New York index had escalated well ahead of the national consumer price index and the single most repeated reason given to me was, "By gosh, there is no reason why we can't have the regional consumer price index rather than something that has Podunk, Kentucky," or what have you.

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[894] From that point you heard mandatory overtime, "Why can't the company give me notice? Don't they realize I have problems at home, I should have the opportunity to call my wife? Why do they have to wait until five minutes to five to tell me I am stuck?" Or in cases the company insisted to have in the contract if they catch you in the parking lot until quarter after five you are considered on duty and they can bring you back. Why when the company interrogates an employee, where there might have been a theft in the building, or for whatever reason, why can't he have a union steward present?

Even in those cases where they used what we call special agents, many of whom have police experience, and two or three get one employee in a room and prohibit him from having a union representative—

The Court: Just detail for me the subject matters. I don't need the details.

The Witness: I feel strongly about it.

The Court: I can sense that.

The Witness: The absence control plan, where an employee with five years of service who perhaps in his last year or two had a bad luck of health, was treated—I should

[895] say an employee of 20 years service, they tended to discount his prior good service and treat him pretty much like someone with 5 years of service.

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[896] Q. What part, if any, do you feel was played by the availability or receipt of unemployment insurance? A. At no time in my presence did anybody ever raise the question of unemployment insurance as being a reason to go on strike or to continue the strike. At no time did this union, of which I am a decision maker, ever in this strike or any other strike say, "Well, do we get unemployment insurance?" It just doesn't happen.

[897] From my judgment, the strike was inevitable and it would have happened whether there was UI or not and lasted just as long.

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Mrs. Marcus: Your Honor, what I am trying to get at is whether the people on strike had previously been making higher salaries than their salary scale indicates because they were working overtime.

The Court: Ask him if he knows that.

The Witness: Yes, I do, your Honor. Just prior to these negotiations, and it would be in 1970 and into the spring of 1971, New York Telephone was on a vast service improve-

[898] ment program, where hundreds of CWA members were brought in from other companies around the country, but an agreement that had been reached was that our members in New York Telephone would receive a minimum of 12 to 15 hours a week overtime before anyone else would —a week—before anyone else would be permitted to work.

So the gross earnings prior to the strike were extremely high.

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[899] Q. Does that mean the union's attitude towards the commencement of a strike or continuation of a strike would be altered by the fact that the union would cease to make food assistance payments because of the availability of [900] unemployment insurance? A. It would have no effect whatsoever.

Q. Why is that? A. Because we have more strikes outside of UI states than in UI states. The same benefits, combined benefits, the same needs that our members in New York Telephone receive are payable in Massachusetts, in Kentucky, or wherever.

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[918] Q. I show you Defendants' Exhibit 50, the contract that was agreed upon between New York Tel and the Communications Workers.

Can you identify this? A. Yes, it is the contract.

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Q. In that contract, sir, what was the difference in wages [919] between the pattern settlement and the settlement accepted by the majority of New York Tel employees in February, 1972? A. One dollar a week for some employees.

Q. Was the Saturday differential pay a substantial monetary gain? A. No, it was a gain, but I would not call it a substantial gain.

Q. Why was it not substantial? A. Well, first, the company controls how many people they will assign to work on Saturday as one of their regular five days of a work week,

and it is a significantly lower figure than those who work Monday to Friday, and the net gain would be for those who do work, would be 15 per cent above their normal rates.

So if it was a $40-a-day person, for him it would be a $6 gain, for just when he fell into those circumstances.

Q. Was this the same as the union demanded on Saturday differential pay? A. No, it was not.

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[920] Mrs. Marcus: 78, your Honor, is already in evidence. These are statements of the company to the Wage Board. I would like to offer into evidence 77 and 79.

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Q. Who drafted the document? A. The New York Telephone.

Q. Did the union make any changes on it? A. No.

Q. Reading from 78, the sentence appears, "Terms of agreement similar to Bell System pattern. All terms generally are identical with the pattern of those of other Bell System companies."

That was from the outline. Page 5 of the statement itself, these slight additions to the July 18, '71, pattern are insignificant especially when one considers that their per-[921] centages are significantly reduced for the first year of the contract because of the seven months' strike."

That was not your language but the company's language, is that it? You did not draft that language? A. That was the company's.

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A. Well, the so-called gains, we covered two of them, one was some people getting a dollar increase a week and some getting a dollar-fifty a week increase.

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[964] Cross Examination by Mr. Benetar:

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[979] Q. The fact of the matter is that as long as the pattern bargaining had prevailed, you did not know of a single strike in which the pattern had been exceeded in CWA units, isn't that true? A. As a result of a strike?

Q. Yes. A. That's correct.

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[980] Q. In a letter dated February the 4th to the members, you stated, did you not: "New York Telephone and A T & T repeatedly said they will never change the July 18 offer, and for more than six months they continued to say 'never.' They said 'never' in relation to new money and they said 'never' in relation to matters of principle. 'never' had been removed . . ."—the word "never" in quotes—'. . . [981] never' has been removed from A T & T's vocabulary.

"Although there are a number of significant improvements, we did not get all we deserve and are entitled to, but we broke new ground. We led the way for telephone workers across this nation. We will be looking forward to further improvement in 1974 in those former 'principle' areas. The credit for what has been accomplished goes to you, the member, whose perseverance and dedication was visible for all to see.

"This membership attitude, coupled with the support of the officers and financial resources of the union, about 15 million in defense fund money, convinced the Bell System to reach an accord.

"Here are some of those items that Bell previously said 'never' to."

You listed "The pay for premium for Saturday" as No. 1, and you said in that paragraph:

> "This is a major breakthrough that will lead to full-time and one-half payment for Saturday as such. This is a first in the Bell System."

Here what you were saying was that you got part-premium for Saturday in the 1971-72 strike, but you saw it as a foot in the door never previously inserted in the door to [982] get full premium pay of time and a half for Saturday in your next contract; true?

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The Witness: I would have to say yes, qualified.

Q. "Full agency shop. New York plant is the only bargaining unit in the system with this benefit. All employees. [983] including strikebreakers, are required to either join the union or pay the equivalent union dues. There will be no freeloaders.

> "This proposal sets forth a temporary suspension of agency shop obligations for unauthorized work stoppages."

Did you regard the obtaining of a full agency shop as a significant item in your settlement? A. Yes.

Q. "Wages: The top two craft, linemen and up, will receive an additional dollar at maximum except in Zone 2-A where it will be a dollar-fifty."

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[984] Q. . . . Was this the first time that there was a wage increase granted over the pattern to one of the Bell System companies under contract with CWA?

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[985] A. . . . Where you are using a "pattern settlement" the answer is no.

Q. No? A. But there have been added increases in the Bell System in CWA following a strike.

Q. Well, at page 14 of your deposition you were asked:

> "Q. Do you know of any instance where an operating company struck to go above the pattern and did succeed in going above the pattern? A. New York is one.
>
> "Q. When you say 'New York' you mean in 1971? A. By you, yes.
>
> "Q. Is there any other you know? A. There are strikes by non-CWA unions in Bell. I just don't recall what the settlements were.
>
> "Q. I'm just talking of CWA. A. I don't recall any."

A. I stand on that, Mr. Benetar. If you are referring to [986] above a pattern—

Q. Yes. A. —the answer stands. . . .

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Q. Thank you. I read you from your letter to the membership about the achievements in the strike. I would like to read to you what the national president, Mr. Beirne, said about this in the CWA News of February, 1972, Exhibit 162.

> "The New York Unit was up against an almost impossible task . . ."—

He is describing the situation confronting them when the strike was continued.

> ". . . trying to top the 33½ per cent pattern settlement [987] that was rated by the press as the biggest package negotiated by any industrial union in 1971."

Does that refresh your memory now about what the settlement in the basic pattern was? A. If you say that's what it was—

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[988] Q. Let us try to end this. Do you accept his statement as accurate or don't you? A. I accept what he said as accurate.

Q. All right. I call your attention to Exhibit 163, which is a column written by Mr. Beirne under, the title of "Off My Mind." It comes in the same issue of the CWA News, and he says there:

> "This is the first time in the history of the Bell System where they have made monetary improvements in a wage offer and benefit offer once a strike was begun.
>
> "There have been many strikes in the Bell System since shortly after the turn of the century. At no time have they ever added to the cost of their package. To us this is a significant change in viewpoint and the policy of the Bell System Management."

Did you take this as a sincere expression of Mr. Beirne's belief? A. I don't recall what my impression was at the time. I don't recall reading it.

Q. Do you accept his factual statements in there now?

[989] A. Well, I think he had one error, because I do recall many years ago where there was an agreement between Beirne and A T & T that did increase.

Q. You think so? A. I seem to recall that, something known as the Craig-Beirne agreement.

Q. Now let's get back to the news report in this same bulletin.

The Court: Before we move on. Is there any question, any dispute that that statement was made by Mr. Beirne?

The Witness: No. If he says it was in the CWA News, I am not quarreling with that, your Honor.

The Court: Go ahead.

By Mr. Benetar:

Q. Now, Mr. Bahr, Mr. Beirne made an evaluation of the settlement in the CWA News of February, 1972. He said:

> "Discussing the significance of the settlement 'which is a win' President Beirne pointed out two major breakthroughs in principle that 'break altogether new ground.' They are: full agency shop for the first time in any Bell System contract anywhere in the country (and pointing the way to similar agreement elsewhere [990] in the industry in 1974.) Premium paid for Saturday as such, although the amount will be limited to 10 per cent now, rising to 15 per cent next July; the recognition of Saturday as a premium day in itself is another 'first' long sought by the union. 'It is now reasonable to conclude that this can also be reconciled in 1974 throughout the System.'"

Do you recall this? A. It shows how wrong he was.

The Court: No. That is not the question. Strike out the answer.

Do you recall that statement being made?

The Witness: Yes. I remember reading it.

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[993] Q. I want to read another excerpt from Mr. Beirne in this same statement, or part of an interview with him.

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[994] Q. "He gave accolades . . ."—'he' being Mr. Beirne, according to this newspaper—". . . to all who had contributed to the successful conclusion of a long and bitter strike, commending the local leaders who led a good strike, the executive board staff and members everywhere who helped.

"In Washington it was revealed that the strike had almost depleted the union's 15 million dollar defense fund. During the strike workers also become eligible for Unemployment Compensation under the New York law."

Do you have any recollection of this item in your CWA newspaper at all? A. Not specifically. It is, of course—of course the facts are true.

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[996] Q. I want to inquire, did Mr. Sanchez, your deputy, report the incident of September 9th at the bargaining table to you when he told the company that Mr. Beirne said that "If you dare postpone unemployment insurance payments, you'll have the union at your throat for the next ten years." Did he report that to you? A. I'm aware of it, and I don't recall just how it was made aware. I'm aware of what you just read.

• • • • •

[1005] Q. At the beginning of the strike, according to the [1006] documents that I have seen here, you had about $13 million in the defense fund—"you" meaning CWA right? A. Yes, approximately.

Q. At the time the strike was over you had borrowed 2 million, right? A. Yes.

Q. And by the time the strike was over the 15 million was practically gone, right? A. Yes.

• • • • •

[1008] Q. Let's look at the figures. The union was prepared to spend $30 million for defense fund. How much was paid out—paid out by unemployment insurance, do you know?

• • • • •

[1009] Q. . . . Would you accept it if I were to tell you that the total amount paid out for workers of all three of the companies was somewhere between 48 and 50 million? A. Yes, I'd accept it.

Q. By virtue of the existence of this 48 to 50 million, you didn't borrow the additional 15 million—right? A. That's right.

Q. —you didn't go around to your membership, as you said yesterday you may do and ask for voluntary donations—right? A. Right.

Q. You didn't have to impose an assessment on your members outside of New York State—right? A. Right.

• • • • •

[1010] A. I'm sorry. In 1971 there was no program, financial or unfinancial, that I am aware of.

Q. And you never had to resort to an appeal for funds? A. That's right.

Q. The food allowances were discontinued as payments out of the strike fund when UI started, true? A. Yes.

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[1019] Recross Examination by Mr. Benetar:

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[1021] Q. . . . You said, in effect, we are constantly sending signals to the employer which may have an effect on bargaining even if we are not bargaining at that particular time. Did you just say that? A. We are bargaining all the time.

Q. That is right. When Sanchez got into that bargaining meeting and he said, "You are going to have us at your throats for ten years if you interfere with our UI payments," wasn't he sending a signal to the company that the union considered this an important item for its members and that they were really going to fight and fight long if the company fought them on it? Wasn't that a signal? A. We considered it an important matter for our union, and all unions.

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[1022] JAMES WESLEY KUHN, called as a witness by the defendants, being first duly sworn, testified as follows:

Direct Examination by Mrs. Marcus:

Q. Where are you employed, Dr. Kuhn? A. At Columbia University, Graduate School of Business.

Q. In what capacity? A. I am vice dean of academic affairs and professor of industrial relations.

Q. How long have you been on the faculty of the Graduate School of Business? A. This is my twenty-first year.

Q. How long have you been vice dean? A. Since last July.

Q. What subjects do you teach? A. I teach industrial [1023] relations, manpower, collective bargaining, and a course called conceptual foundations of business, which examines the social, political and economic environment of business.

Q. What is your educational background, Doctor? A. I am a Harvard College graduate, my bachelor's, I took my master's and PhD from Yale. I studied at Oregon State College and also at the University of Sydney.

Q. Can you summarize your additional professional experience? A. Well, I have taught at Pomona College, University of Oregon, and Stanford University, and I served on the Council of Economic Advisers.

Q. What is the Council of Economic Advisers? A. The Council of Economic Advisers—I am sorry, I meant to say the staff of the Council of Economic Advisers. The Council of Economic Advisers is a three-man or a three-person group of advisers, who counsel and advise the President on all economic matters of national importance.

Q. The Presidents of the United States? A. Yes, the Presidents of the United States.

Q. For which Presidents of the United States have you functioned in this capacity? A. For Lyndon Johnson and Richard Nixon.

Q. What did that position involve? A. I was the in-[1024] dustrial relations and manpower expert on the staff, senior staff economist, and I reported to the President, particularly President Johnson, certainly weekly and sometimes almost daily, on industrial relations, collective bargaining developments throughout the country, and on manpower programs and the implications of all other legislative programs that went through the White House.

Q. Have you received fellowships in the field of economics? A. Yes. I received fellowships from the Ford Foundation and the Rockefeller Foundation.

Q. Have you any other professional affiliations? A. Well, I am a member of the Industrial Relations Research Association, the American Economic Association, two associations in Australia, mostly for sentimental reasons, and I served in various capacities with the National Council of Churches and the Presbyterian Church.

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[1027] Q. You stated that one of the aspects of your study was to examine the theory about which Dr. Backman testified on Thursday. . . .

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[1028] The Witness: The hypothesis was that, as I understood Dr. Backman—I must say I wish I had thought of it myself, because it is testable—that the payment of unemployment insurance affects the staying power of strikers, and thus it would cause either longer strikes or shorter strikes than otherwise; but in either case and inevitably it would lead to larger settlements than otherwise. And this, it seemed to me, was a testable way of putting the hypothesis.

The Court: What did you bring to bear on that hypothesis, given your background?

The Witness: Well, the longer and shorter strikes, since strikes can be either longer or shorter, it seemed to me

one could not do a great deal with that. One could not do a great deal with that, though one of the studies that I saw done by Dr. Perl did move in that direction. But it did seem to me that one could test the final conclusions of Dr. Backman's thesis, final implication, and that would be that wage increases would inevitably be higher in those industries in states that had unemployment insurance.

And so I checked out such industries in New York, which has unemployment insurance paid to strikers—

Mr. Benetar: Excuse me.

The Court: Let me be sure I understand what you are [1029] saying. I may have not recalled the specific testimony, but I don't remember anything being said about inevitably doing this or absolutely, but I think it was a question of a tendency. Are we not talking about tendency as opposed to inevitability?

Mr. Benetar: In the first place, we made no claim that wages would be higher—

The Court: Would inevitably be higher.

Mr. Benetar: That is right, be inevitably higher.

The Witness: No, wage increases, sir.

Mr. Benetar: We did not even say wage increases.

Mrs. Marcus: May I read from the transcript, your Honor?

The Court: Where are you reading from?

Mrs. Marcus: It is very simple to read from the transcript rather than to argue the point. It is page 366, and I read from the transcript:

> "Q. You testified that unemployment insurance in some cases lengthens and in some cases shortens strikes, is that correct? A. Yes, ma'am.

> "Q. In the cases where strikes are shortened, what is the effect on the wage settlement on the supplementary benefits included in the settlement? A. I [1030] would think that in those cases a higher price had to be paid in order to abort the strike and therefore would act to increase the cost of settlements.
>
> "Q. In the cases where strikes are lengthened, what is the effect on the wage settlement and the supplementary benefits included in the settlement? A. I would think it would also increase the cost because the relative position of the union and the workers is considerably strengthened and in the usual interplay in collective bargaining this would suggest a more liberal settlement at a higher cost.
>
> "Q. So then, Doctor, your conclusion is that whether UI has increased or decreased the length of strikes, wage settlements on the average will increase? A. I would think they would, yes."

The Court: That is my memory, and that is not "inevitably," but that is on the average.

The Witness: All right, I stand corrected then, your Honor.

The Court: All right. Let us go ahead on that basis. What thinking do you bring to bear on this testimony that you just had read?

The Witness: I then examined union wage data—and these would be average data by industry—for the two [1031] cities in New York that were available, Buffalo and New York City.

Q. Did you examine real wages or money wages? A. I looked at both, but I think real wages is the important variable here, the variable to which the workers do respond, and the data so indicated.

Q. What industries did you examine? A. We examined five industries. I have them down on a piece of paper, but I think I can remember them: local transit, trucking, job printing, newspapers, and construction or building.

Q. For what periods did you examine these industries? A. For New York City the period was 1947 to 1973, and for Buffalo the data are for 1964 to 1973.

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[1036] Q. What were your findings? A. Well, what I did was to take the industries in Buffalo and the five industries in New York City, and then decided that we probably ought to make that nine industries, because local transit [1037] in New York City is public employees, and they are not eligible for Unemployment Insurance if they strike.

Putting aside that, there were nine cases of industries and workers wage rates. Five of those nine showed that the wage trend was lower than the wage trend elsewhere.

The Court: Where is "elsewhere"?

The Witness: Elsewhere in the United States, outside of New York.

A. And that four of them were above the wage trend in New York. This is for the same industry.

This, I conclude, was not statistically significant, because we have something very close here to 50-50, almost half were above and half below, and we would need at least seven of those nine industries or eight of the ten to be statistically significant.

Therefore, I concluded that the evidence did not support Dr. Backman's hypothesis and perhaps contradicted it.

Q. You referred to other aspects of the study as paralleling the work done in Princeton by Ashenfelter? A. Yes. This is a study looking at the effect of past wage increases upon present settlements, the duration of strikes, and the inclination or will of workers in demands or a willingness [1038] to stay out on a strike.

Q. How long did you examine that question? A. Well, as I mentioned before, I have been looking at that very close to a year. And I had further interest in that ever since the article came out in the American Economic Review in 1969. It was an innovative and very useful analysis.

Q. What were your findings on that aspect of your study? A. Well, it confirmed Ashenfelter and Johnson's analysis that there is a very high negative correlation between past wage increases and the propensity to strike, the number of strikes, and thus the willingness of workers to strike at the present time. It seems that when wages are high one time, then there is going to be a depressive effect on strike activity and workers willing to stay out at the present time.

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[1039] A. The significance of the negative correlation is that if workers receive an extraordinarily large increase at one time, there is quite a definite tendency for the next settlement to be considerably lower.

Q. What is the significance of the positive correlation between recent price increases and strikes? A. Well, that the higher—the faster the Consumer Price Index rises, the

higher the demand for wage increases will be, and the more willing the workers are to strike to enforce those demands.

Q. Is this why you considered real wages in your study of union wage rates in New York City and Buffalo? A. Yes. I think it is important and probably the only valid way to analyze wage trends as it affects workers' willingness to strike and their demands.

Q. According to this data, the employees' demands and [1040] willingness to strike in a particular industrial dispute are affected by the wage rate and settlement received in the past, is that so? A. Yes, that is so.

Q. Now— A. And very strongly so, according to the statistics.

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[1041] The Court: But how does it rule out the Unemployment Insurance factor? That is the key question we have.

The Witness: Well, I would rule it out completely, your Honor. I am saying if one accepts Professor Backman's hypothesis, then it is that no matter if you have the long strike or the short strike, the wages will go up, they will be increased. But since some of the industries do not show an increase while others do, then one has to explain why some are high and some are low. It appears inconsistent. While the hypothesis would be that all industries would show an increase above those elsewhere in the [1042] country.

The Court: Yes, I appreciate the principle that is embodied in what you are talking about, but are the two principles mutually exclusive?

The Witness: I am sorry, sir, which two principles?

The Court: Your principle that if one wage settlement has been high, the succeeding one generally tends to be, I take it percentagewise, lower. That does not exclude the fact that the presence of Unemployment Compensation in New York might have resulted in each of them being higher than it might have been had there been no compensation in the picture.

The Witness: Yes, sir, I think it does exclude that.

The Court: In what way?

The Witness: Because, in looking at the different industries, the trend of wages in the two cities in the different industries, we find some are consistently higher and some are consistently lower than elsewhere in the country. While I would expect under the Backman hypothesis for all of the industries, since they were all subject to the same forces of the Unemployment Insurance, to respond the same. And I would explain that by my second study of the effect of [1043] past studies—of past wage increases, and that is that they tend to average out.

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[1044] Q. You mentioned that there are other aspects of your study that have gone back to the publication of your very first book. Can you describe this aspect? A. Well, this is a problem and an approach to collective bargaining of which I have long been interested, and that is examining strikes by the kind of issues—classifying strikes by the kind of issues that are involved in them.

This follows along very much a classification that Professor John Dunlop, my long-time mentor and colleague,

and Derrick Bok, president of Harvard, a professional colleague of mine, have also used.

I think it helps explain strikes in a way that I find a good deal more satisfactory than Professor Backman's hypothesis.

Q. Can you describe these classifications? A. There are three major ones: the first one is that strikes and [1045] disputes arise over issues of substance, you might call them: wages, hours and working conditions. These are usually relatively easily settled and disposed of, though sometimes they lead to strikes. But usually they are shorter strikes.

Intermediate kinds of problems might be called the industrial relations problems of those disputes that involve intra-union political disputes and conflicts, or even sometimes intra-company or intra-manufacturing association disputes, problems over the timing of the contract; and, the third, which I think is most relevant to this present situation, are those most intractable issues of all dealing with the structure of the collective bargaining relationship, and that is who will set a pattern, which union leads off or which company leads off; the issue of if it is going to be a craft union or an industrial union; the major changes where grievances are to be settled, as in the steel strike of '59 and '60, to be settled at the local level or at the national level. Strikes such as these are exceedingly intractable and difficult and there is no easy solution to them.

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[1049] Q. If there were no data in support would this mean that Dr. Backman's theory could be supported on assumption alone? A. I do not think so. In that case any other reasonable assumption or assertion could be equally true.

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[1050] Q. Did Dr. Backman assume that sources of income were limited? A. It seemed to me he did in his initial statement, but later pointed out that there are other resources available to strikers.

Q. Is this assumption supported by the book Welfare and Strikes by Thieblot and Cowin on which Dr. Backman said he relied? A. It is asserted by Thieblot and Cowin, but I saw no evidence in the book that the workers are so [1051] limited, and, in fact, I think there is one statement in the book where the writers say, if I can remember, that one would have to be positively clever, both friendless and improvident, in order to starve during a strike.

I think I would agree with that, that in a society as rich as this, with the amount of resources available to people, even such as migrant workers, who are probably among the poorest in the country, they can and have conducted themselves on strikes, finding support in all kinds of ways, if the issue is important enough.

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The Court: Before we leave that. I suppose that at some point everybody is entitled to welfare.

The Witness: I am not sure of that, your Honor.

The Court: Let us think about that for a minute.

The Witness: Your Honor, I would say even without welfare, looking back on the history of strikes—

The Court: You make the general comment that everybody on strike is somehow going to find a way to finance himself.

The Witness: Yes.

The Court: If money runs out, public assistance at some point becomes available because the community is not going [1052] to let a member of the community starve, isn't that correct?

The Witness: Yes, sir, but I would say even before the community took that burden upon itself—workers struck. struck long and found resources to support themselves.

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[1053] Q. Does Dr. Backman relate his analysis in any way to the issues which cause strikes? A. I did not hear him refer to the issues as an important matter in strikes.

Q. What is the effect of this? A. Well, I think that the effect of that is to disregard the key to what strikes are all about.

Strikes occur because there is a dispute over issues and the parties' focus is upon the issues and the settlement of those issues, not upon what may be happening down the road. The strike is over when the issues are resolved.

Q. Have you reached any conclusion about the effect of unemployment insurance payable after an eight-week waiting period on the resolution of strikes? A. Yes, I have. And based on the evidence I have seen, I would conclude that there is no relationship.

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[1077] Q. Can a long strike be won economically by employees? A. I do not think so.

Q. Why do you say that? A. I say that because in almost any calculation of the loss in wages and the other costs run up by strikers that are not immediately met, it takes if you calculate actuarially—or not actuarially—on a compound rate of interest discount, you discover that almost any possible wage increase is so small that they are going to come out in the hole.

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[1098] Cross Examination by Mr. Benetar:

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[1106] The Witness: If collective bargaining includes the subjective feelings and evaluations of the parties, then certainly their opinions about unemployment insurance affects collective bargaining.

The Court: You mean it is the difference between expressing it and not expressing it?

The Witness: Yes.

The Court: You say that subjectively, without expressing it, it may be a factor?

The Witness: Yes, it may be a factor in collective bargaining that is so broadly defined that it includes that, [1107] but if you are looking at the outcome of collective bargaining, I see no connection.

The Court: I am not sure what you mean by outcome.

The Witness: The settlement or behavior—

The Court: If you say it is arguably a factor in the thoughts of people in negotiating, therefore necessarily the negotiated result has been part of the factors going into that negotiated result and it is a factor, it doesn't drop out because a result is arrived at.

The Witness: It may, it may drop out or be acted upon by another factor and until one explores all the factors, one could not say what is the final result.

The Court: Go ahead, Mr. Benetar.

By Mr. Benetar:

Q. Dr. Kuhn, you appreciate, do you not, that in collective bargaining the strengths that the respective parties have play a part in the outcome of their negotiations? A. Play a part, yes, sir.

Q. That is all I asked you. You also appreciate that the strengths which the parties estimate they have play a part in collective bargaining, isn't that true? A. In collective bargaining broadly defined, yes, sir.

Q. Now, you have written on this subject, haven't you? [1108] A. Yes, sir.

Q. And you have said in your book on collective bargaining, page 172, "In terms of an agreement process the most meaningful view of the cost of someone disagreeing with you on your terms is that person's conception of the costs. His prediction or estimate of the cost to him of disagreement with you is conclusive with him. He may be either right or wrong, of course, as he may discover during negotiations or as you may be able to convince him. Consequently, bargaining power becomes in part a matter of influencing the psychological reactions of the negotiators. One may use the tactics of sheer bluff, but it is also possible to influence another's estimate of the cost of disagreeing on your terms by a straight factual approach if you believe he is operating on an unwarrantably optimistic estimate."

Did you write that? A. May I see it, please?

[1109] Q. Of course you may see it. Don't you remember it? A. Yes, it sounds familiar. I want to see what chapter. Which page, sir, was that?

Q. 172. Toward the bottom. In fact, the last paragraph that commences, "In terms of an agreement process." A. Yes, sir.

Q. All right. Now I want to ask you a question, Dr. Kuhn: If a union believes that strike power is enhanced by unemployment insurance, and so expresses itself, in your opinion, if they believe that, is unemployment insurance exerting some influence in the bargaining situation? A. I do not see how one can say, Mr. Benetar, unless you know the influence of the other factors, because this psychological factor may be offset by others.

Q. I didn't ask you to weigh the factors. I understand there is more than one factor in bargaining.

The Court: Well, I think Dr. Kuhn has said yes, it's a question of what happens to that factor, that is all he's saying. He says, it is a factor. All right.

Mr. Benetar: All right.

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[1111] Q. . . . Now I would like with you to take a little closer look at some of these documents which you have swept aside on the ground that they tell us what they, meaning the union, thinks, but don't tell us what they do.

Let's take a look at some of these documents together. And by the way, how many of the documents that are in evidence here did you personally read? A. Well, I won't want to give you an account. I've read more than I ordinarily would have. I went through dozens of them.

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[1117] Q. So that in this, your surprise would have been [1118] if the union had not been looking to see that their workers received whatever unemployment insurance they were entitled to, am I correct about that? A. Yes, you are correct.

Q. And would you then agree that since the union was out on strike, and the workers were out on strike, the union saw this unemployment insurance as a means of helping to support their workers during the strike? A. Well, what do you mean by helping support?

Q. Well, I mean half of their pay with a maximum of $95 a week. Now I cannot make it any simpler than that.

Do you consider that if a man gets half his pay up to a maximum of $95 a week, that he is getting help to support himself; yes or no?

Mrs. Marcus: Objection.

Q. Let's get on this—

Mrs. Marcus: The question is about a situation in 1971, and the maximum was $75.

The Court: $75 a week.

Q. 75, I stand corrected. A. I don't think it can be answered yes or no.

Q. You don't know? A. No, sir, because it depends on what the alternative is, whether it is extra help or help [1119] at all depends on what the other resources of the workers are.

Q. Well, if he can get this help from the State, without going on welfare, without borrowing from his relatives, without dipping into his savings, without, as you suggested, cashing in the cash value of his life insurance, wouldn't you

be willing to say that the payment of this unemployment insurance was a help to the workers during this strike in helping them support themselves? A. I'd be cautious in that because—

Q. I beg your pardon? A. I would be cautious in saying that, because while many workers did take the unemployment pay, others did not.

Q. Well now, there were 29,000 who took the unemployment pay in New York Telephone Company alone. A. Over the whole period.

Q. Does that overcome your caution in any respect in saying that it was a help to these people? A. No, sir, because as I understood, there was some 38,000 strikers total.

Q. And so you're saying, taking the 38,000, that because only 29,000 collected $43,000,000, you would be hesitant to call that helping the strikers to support themselves during [1120] their strike, is that right? Is that what your caution stems from? A. Both that, since not all members took it, went after the unemployment insurance, and secondly, that they may well have had other resources, as the large number who apparently did not indicate.

Q. Well now, I want to ask you, if you were a worker, and you had savings on the one hand and the right to go to the unemployment insurance and get half your pay, on the other hand, without dipping into your savings, which would you do? A. It depends on what the issues are involved and how the people see it, Mr. Benetar.

Q. In other words, you're saying that if the issues in the strike were of one kind, the man would rather dip into his savings than collect unemployment, but if the issues were of another kind, he would rather get unemployment than

dip into his savings; is that what you are telling the Court? A. No, sir, I misled you.

I meant, the issues both for the person himself, both as to his own resources, his own economic situation.

Q. Whatever his economic situation—and I put it to you again—if you were a worker, and you had the choice of dipping into your own savings, mortgaging your home, [1121] cashing in your life or borrowing on your life insurance, selling your car, borrowing from your brother-in-law, on the one hand, or going in and collecting 50 percent of your unemployment, of your wages up to a maximum of $75, and you were on strike, which would you do? A. I do not know, sir, and the fact that somewhere between, the difference between 29,000 and 38,000 workers did not go for unemployment insurance, suggests that one would have to look at those various reasons that people chose not to—

The Court: Dr. Kuhn, how about the 29,000? Did they accept it because they were, they decided they would rather use it than personal savings, personal sources?

The Witness: I would assume so, yes, sir.

The Court: As to them, would you say it was a help?

The Witness: The mere fact that they took it, I would take it that they did see it as a help.

The Court: All right, go ahead.

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[1129] Q. I would like to read to you from Exhibit 184, which is a report of the defense fund committee of the CWA to its 6th Annual Convention. This was a committee that was charged with the duty of looking into the question of strike funds and reporting back on the wisdom or desireability of creating one.

Do you remember reading this document, 184, which is the report of that committee? A. I think so, sir—yes, I do. [1130] Q. Do you remember reading, "It was recognized that regardless of every other consideration the union could not hope to survive unhurt in time of stress without an adequate defense fund. The experience of every union that has ever joined battle with its bargaining adversary in a show of strength proves that a war chest under one name or another is an absolute must"? Do you remember reading that? A. I remember reading it, yes, sir.

Q. I will read you a little more before I put my next question: "Therefore, realizing that the chief use of a defense fund is to strengthen a union's position at the bargaining table and where necessary to sustain effective strike action, the committee was compelled to reach the conclusion that the defense fund should properly be under the control of the International Executive Board. The defense fund is a tool, it is one of the bargaining tools similar to such a bargaining tool as statistics which are gathered by the research department and cannot do a job unless it is held in proper hands. Under the control of the same party which is responsible for collective bargaining, the defense fund is the primary means of implementing the bargaining program. Operated in any other manner, it would not truly be a defense fund at all, it would be something else."

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[1131] The Court: Dr. Kuhn, buried in those sentences is the denomination as a tool, weapon, defense fund, strengthening at the bargaining table, and the question to you is, do you as a member of a university faculty disagree with the union members who were involved in setting this up

as to what they conceived it to be? They are stating this as a fact and you are here as an expert. Does your opinion disagree with what they have stated as a fact?

[1132] The Witness: Yes, it does, your Honor.

The Court: For what reason do you disagree with it as a fact?

The Witness: I disagree because we have too many other cases of unions not having strike funds that conduct strikes successfully and long.

The Court: Well, some armies can win a battle even without having sufficient number of tanks, but that doesn't mean that a tank is not a good weapon for an army to have. Isn't that the comparison?

The Witness: I would not think so, sir. If you have tanks in Viet Nam, it doesn't help you at all and is not an appropriate weapon.

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[1135] Q. Well, now, let me read to you again. "As a result, each party has made efforts to increase the effectiveness of these tactics"—strike and lockout—"and to render itself immune to the tactics of the other."

Now, that means the union on its side is trying to render itself immune to the employer's countertactics.

"The efforts have centered primarily around the union's seeking to strengthen the strike weapon and management seeking to weaken it."

Now up to there, there is no doubt that you were teaching that unions seek to strengthen their strike weapons; no doubt, is there? A. No.

Q. Answer for the reporter, please. A. No.

Q. All right. "In some of the earliest recorded turnouts

of journeymen, we find evidence of the use of strike benefits [1136] to lengthen the staying power of the workers and thus increase the cost to the masters of disagreeing with them."

Weren't you saying there, immediately following the previous sentence about strike weapons, that an illustration of this is that strike benefits are used to lengthen the staying power of the workers? A. No, sir. And if you will read carefully what I said, it is that in some of the earliest recorded turnouts of journeymen we find evidence of the use of strike benefits to lengthen the staying power. But there is no evidence that the strikes in fact were lengthened and in fact I suspect that there is—well, I know there is no evidence one way or another on that.

Q. Well, now we will come back to that question of evidence one way or the other in a moment. But I'm going to get back to my question to you, and that is, do you still say that strike funds are not strike weapons in any sense of the term? A. Yes, sir, I will, and the reason is that in this case, and I went back and looked at the nature of these strike benefits, they were actually loans made by the union that had to be paid back after the strike, so the effect then was to strengthen a union as an organization rather [1137] than to affect the strike.

Q. Well, then are you saying that because there were loans, they were not a strike weapon? Is that what you are saying? A. Well.

Q. Isn't cash a factor in providing the means for a union to help keep its members together during a strike? A. No, it means that the relationship between the worker and the union was changed, and that is what was important. The union was seeking a device to protect itself as an organiza-

tion; and winning the strike was incidental, and it lost most of their strikes.

Q. Well, if you gave an illustration here, in the context of talking about strike weapons, of a case where the union loaned money to its members, wouldn't you agree that the effectiveness of a fund as a strike weapon would be enhanced by the fact that the union was giving the money and not lending it? A. No, sir, we do not know. One has to look for objective evidence.

The Court: Mr. Benetar, go on.

Mr. Benetar: Yes, sir. I'm going ahead.

Q. Did you observe that the union in this strike resisted threats to the strikers' receipt of unemployment insurance [1138] and issued tapes to that effect? A. I didn't quite understand the meaning of your question.

(Question read)

A. I don't quite understand what you mean by threats.

Q. Let me read you a few of the tapes, then.

24; Exhibit 24. "According to the Staten Island Advance on Friday, December 3, our councilman, Frank Dondeauld, introduced a resolution which asks the state legislature to repeal the law enabling strikers to obtain unemployment insurance. This ex-dentist now finds he has all the qualifications for public office, is certainly alienating labor, and will find this out when he tries for re-election."

Did you read that? A. Yes, sir, I did.

Q. And when you saw that they were saying that this man was alienating labor, didn't you understand this to mean that by taking away unemployment benefits to strikers they were weakening the position of the union and the

strikers in the strike; didn't you understand that? A. Not necessarily weakening it. Making them unhappy, yes, but not necessarily weakening it.

The Court: Why did it make them unhappy?

[1139] The Witness: Because as union leaders they were concerned that they be able to demonstrate to their men that they have gained something for them, that they have gotten their share or their place at the public trough, so to speak. And as union politicians, they are very sensitive to that.

The Court: What had they got in the public trough, as you put it?

The Witness: A right.

The Court: What does that right consist of?

The Witness: Of getting funds.

The Court: And what can the union strikers do with those funds?

The Witness: Whatever they do with any other funds that they receive.

The Court: Go ahead.

Q. Exhibit 36, tape: "In last night's Gannett chain newspaper they editorialized again about aid to strikers and referred to a survey recently taken by New York State Senator Bernard Gordon. The response in his area, the 36th Peekskill area, was that 76 percent responded against aid to strikers. They also mentioned that there are many union people in the Peekskill area who are against aid to strikers. I would like to see our members write to Senator [1140] Gordon and give their views about aid to strikers."

Now, this was written in 1973. Now listen to this: "If

we didn't get aid during the big strike of 1971 and '72, I don't know where we would be right now."

Now, this is a year after the strike was over. The union is urging their members to do something, right? A. Yes, sir.

Q. Did you give any weight in connection with trying to see whether unemployment insurance played a part in collective bargaining and strikes, did you give any weight to the statement of this union official that if we didn't get aid during the big strike of '71 and '72, I don't know where we would be now? When he's talking not about aid from the union, but aid from the state; did you give any weight to that? A. I would give very little weight to it, Mr. Benetar.

Q. Would you give any weight to it? A. Simply as an opinion of a man who is puffing his own political situation.

Q. Puffing his own political situation, a year after the strike was over? A. A year afterwards, he wants to make sure that the unemployment insurance continues and that the union get credit for it.

[1141] Q. Well, now, he doesn't say anything in here about the union getting credit for it. A. He doesn't have to, Mr. Benetar.

Q. Excuse me, he doesn't say anything in here about that. He's urging the members to go out and lobby against the repeal of these benefits and as an appendage to that urge to action, he is expressing a reaction— A. He's trying to scare the workers into saying, look, if you don't do something, something bad will happen, but I don't think that is evidence of a kind that I would take terribly seriously.

Q. Would you take it into account at all if you found that there were other statements by this union in which they were giving unemployment insurance an important credit

in achieving the solidarity of the seven months' strike; would you take them together as having some substantial weight? A. I would give them substantial weight if they were followed by objective evidence that had some consequence.

Q. All right, we will have to come to the objective evidence.

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[1147] Q. Well now, I'd like to read you from Exhibit 236. Did you see this, a statement by Mr. Abel, in the United States News and World Report? A. Yes, sir, I read that.

Q. Unemployment pay. Part of the public assistance that went to strikers was a payment of $9,000,000 collected by New York Steel Workers from the State Unemployment Insurance Fund.

[1148] The report says that 85,000 workers shared in this payment—I'm not sure that is 85. It is a bad copy. Shared in this payment, after going through a 49-day waiting period.

The New York experience, Mr. Abel said, offers a political lesson for his members in other states. He reported this staggering sum of assistance to our striking members in New York clearly demonstrates the need for political activity to legislate humane and fair unemployment compensation laws.

You did read that? A. Yes, sir.

Q. And did you perceive now—withdrawn.

You recognize him as an important labor leader in this country? A. Yes, sir.

Q. Didn't you? A. Yes.

Q. Head of one of the largest unions in the country? A. Yes, sir.

Q. And did you perceive now that he is not talking in terms alone of what his union received in a specific state, but he is talking about extending this type of legislation [1149] to other unions so that they can get the kind of help that the steel workers got in this strike, did you perceive that? A. Yes, sir.

Q. Did you give that any weight in forming a judgment as to whether he saw unemployment insurance as a factor of importance in strikes and in collective bargaining? A. I gave it importance that he saw that it was important, but I would disagree with him that that was what his real concern is or that the evidence indicates.

Q. Well now—

The Court: You just don't credit the statement?

The Witness: I credit the statement that he thinks it is important, but since he has other reasons for wanting it, I suspect in the absence of any contradictory evidence, that it is those reasons that he is really for unemployment insurance.

The Court: Why do you say that—this is what, the president of the Steel Workers, Abel?

Mr. Benetar: Yes.

The Witness: Yes, sir.

The Court: On what basis can you, as an economist, giving expert views on things, say that a man who says some-[1150] thing in the public print, that is acknowledged to be authentic, doesn't mean what he says?

The Witness: That is not what I'm saying.

The Court: That is in essence what you're saying, he does not really mean it. He means something else. Or you suspect he means something else.

The Witness: No, I am sure it is important to him, and that he thinks it is important to the union. I do not believe that it is, however, important in the length of strikes or the kind of settlements that he gets, because he hasn't made a study of that. And it would cause great problems—

The Court: Well, do you know that he hasn't made a study? Do you know that he hasn't in his years of experience come to some kind of a judgment on this? Do you know what his thinking is? What is the basis for that?

The Witness: I don't know his thinking. I have never met Mr. Abel. I have talked to his research assistant, research directors, however, and am pretty familiar with the kind of studies that—

The Court: Have you asked them what they say about unemployment comp; figuring in bargaining in a strike?

The Witness: I have talked—I have not talked to the steel workers, but I have talked to other labor leaders. [1151] The Court: I know. I'm talking now—we were staying with Mr. Abel, and you had said that you suspected he really did not mean what he was saying, and I am trying to get down to why the Court should credit that answer.

The Witness: Not that he didn't mean what he said, but that what he said I do not believe has any objective evidence to support it, therefore it is simply an opinion of his.

The Court: I know, but I am asking why you choose to say that no—you would give no weight to that, whereas the president of the union that has had years of on the line experience, makes this kind of a statement, you reject it. Now on what basis do you ask me to reject it, given this assessment?

The Witness: Your Honor, I would suggest that if it not be rejected at least it be held with considerable suspicion . . . .

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[1152] The Court: You see, the thing that I keep coming back to in all of this, and I am obviously going to have to decide this issue somewhere along the line, but it does seem to me that a reasonable trier of the fact could say that if a person was in the tenth week of the strike, and he was getting half of his pay tax free, that he is motivated, he is more motivated to continue the strike than if he is getting none of his pay of any kind, and whether he gets more money or less money is not necessary—I say that a reason-
[1153] able trier of the fact could conclude this, that if he's got a family, a wife and two kids, and rent, and food, and payments on the TV, and he is getting half his pay tax free, he is in much better shape and much more motivated to keep on striking than if he isn't getting that money, and would you say that that is not so?

The Witness: Your Honor, with all due respect, I say that is very much like, it is putting the problem backward in the same way that if one, this childish game of counting fingers up to 11 by saying, 10, 9, 8, 7, 6 and 5 make 11, and you come out with the wrong conclusion, I would say to focus on the strike as if the strikers are aiming to increase their resources or benefits because they strike is the wrong way to look at a strike.

A strike is to resolve a dispute over issues.

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[1155] The Witness: . . . I think this is where one needs to be careful and this may be the difference between legal

philosophy and economic philosophy, but I would say that predicts certain kinds of behavior from the strikers and the union members, and if there is going to be predicted behavior then it should show up in our statistics. That it does not, and perhaps is even contradicted, leads me to take a very cautious attitude towards drawing causal relationships between unemployment insurance and the outcome of collective bargaining.

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[1158] The Court: How do you account for the fact that in every state except New York they voted to settle in July or early August?

[1159] The Witness: That gives reason to look at New York, but then I would also want to go back to Ohio or other states that may have had long strikes in the telephone company and see why they had them, and if they had long strikes without unemployment insurance that raises questions as to whether long strikes and unemployment insurance have a relationship to each other, causal relationship.

The Court: There was an offer put on the boards that was accepted everywhere but in New York. What does that tell us about this local versus international?

The Witness: That tells us that there may have been peculiar reasons why the locals were upset and here you have to go into the history of the collective bargaining relationship and what was happening to the local unions.

The Court: Then the locals in New York could afford to get upset, whereas the locals in other states could not afford to get upset?

The Witness: One could put it that way but—

The Court: The locals in New York would get financed after 8 weeks—

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[1165] Q. When you recognize that it was in their interest, what you are saying, in effect, is it not, that it was to their interest and as to their interest to see that strikers do get unemployment insurance during strikes. A. To the union, as an organization interest, yes.

Q. Do you say it is of aid or interest to the union but not to the employees who are members of the union? Is that what you are saying? A. It is not necessarily aid and assistance to the union members or the employees on strike.

Q. How does it aid the union? Tell us about the part that you admit. A. It is an aid to the union in that the union will take credit, whether it is really due or not, for the union effort in the lobbying for such legislation. The union leaders can say, "We went to Albany and persuaded them to pass such legislation," or "persuaded them not to repeal it."

Q. And you consider that the only value in the whole performance by Mr. Abel and his recommendation, that the unions would be able to say, "We have been trying to get this legislation extended"? A. I don't know why you say "only." That is a very significant function of trade unions.

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[1166] Q. But would it have a context, would it be that the employees might see some interest for themselves in the extension in other states than New York of unemployment benefits, or do you think it was a pure muscle-flexing [1167] exercise by Mr. Abel? A. I guess since I see no evidence presented by either Mr. Abel or elsewhere as to

the outcome, that I would assume it is a muscle-flexing exercise.

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[1174] Q. You say at page 187 of your book, "When bargaining power is viewed in this manner"—under the heading "Conclusions"—"it follows that it may be altered in one of two ways: (1) by changing the cost to the other party of agreement on one's terms, or, (2) by changing the cost of disagreement."

[1175] Now, one way of changing the cost of disagreement from the union point of view is if the union finds resources with which to continue a strike, isn't that true? A. Yes, sir.

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[1178] The Court: No. When to your knowledge does the average worker, union or non-union, run out of this kind of resource during the course of a strike?

The Witness: Well, sir—

The Court: Obviously—let's forget the strike. When does he run out of such resources?

The Witness: Sir, I do not think we have any evidence that in this country they do run out of such resources.

The Court: There comes a time where you hit welfare, right?

The Witness: Well, I don't know that—sir, as I said last time in my direct testimony, before we had community services employing welfare, strikes have often went on very long and with migrant workers in the agricultural sector, we find workers without receiving welfare and still will conduct strikes exceedingly long periods of time.

This is a very wealthy society—

The Court: I know, we are talking about people who own homes and own cars.

The Witness: Again, it depends on the issue.

If it is worth the sacrifice, we can tighten up and find resources almost endlessly.

[1179] By Mr. Benetar:

Q. Are you saying, Dr. Kuhn, that where the workers do not have unemployment insurance, they have to take recourse to other resources, some of which may be public funds, some of which may be their own funds, right? A. Or business funds, yes.

Q. What? A. Or business funds.

Q. Or business funds. What does that mean, business funds? A. Well, store extended credit or in some cases, as in the case of General Motors, to do its loaned money to the union.

Q. Now, when they do it that way, are the funds which they are borrowing or invading, being used to help them support and continue the strike? A. Well, again, I think that is the backward way of putting it. It enables them to support—

Q. Are you unable to answer me yes or no on that? A. I think I am unable to answer you yes or no. What enables them to continue the strike, Mr. Benetar—

Q. Well, if you can't answer that yes or no, Dr. Kuhn, I don't want to pursue it in the form of a dialogue.

When a man goes for welfare during the course of a [1180] strike, isn't he seeking aid to keep him and his family from want? A. No, sir. I think that that is a backward way of putting the matter.

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[1181] Q. All right. Now let me read to you from your [1182] book, page 174:

"Under some conditions striking workers may find that the costs of a strike decrease over time rather than increase. For example, in the State of New York, unemployment insurance becomes available to strikers after 8 weeks."

Now, this is you raising the question of unemployment insurance, isn't it? A. Yes, sir.

Q. "Two months after the beginning of the long New York City Newspaper strike of 1962, '63, the average striker was receiving enough strike benefits and unemployment pay to total $120 a week, a payment comparable to his regular take home pay.

"In the long steel strike of 1959, federal, state and government local benefits and relief provided the striking workers with at least $22,750,000 worth of aid. Full records may well have disclosed the total government assistance to have been in excess of $45,000,000 according to the union's secretary-treasurer. Or if other related jobs are plentiful strikers may find work elsewhere and feel very little pressure to agree with management's terms."

Do you remember writing that? A. Yes, sir.

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[1183] The Court: Doctor, you say here that under some conditions striking workers may find that the costs of a strike decrease.

What does that mean?

The Witness: It means that the loss of—well, for example, in this case, the loss of wages was mitigated because they received unemployment pay.

The Court: All right. Isn't that a factor that is taken into consideration, maybe not crucial, maybe not the critical [1184] one in some cases, but isn't it a factor? A. It would be a factor that one would then have to look at the cost of agreeing and see how the bargaining power and the outcome reflect it.

The Court: But we agree it is a factor?

The Witness: A factor, yes, sir.

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[1187] Q. I am not going into the subject matter of the book. I am off on another point which you will see in a moment. I observe from this that in the book he quotes materials which include union publications, speeches by representatives of labor and industry, letters written by union members, magazines, such as Business Week and Fortune, excerpts from congressional hearings, containing testimony by labor representatives or management representatives, and company statements concerning their labor policy. I don't know whether you are able to say offhand that you recall that all these things are in the book, but it doesn't surprise you for me to list them and say that they are referred to in the book. A. Oh, yes, I am familiar with the book.

Q. And would you say that it is accepted practice in the field of economics when researching or teaching a subject to have recourse to this kind of source material along with other material in the assembly of a total picture? A. Yes, sir, a total picture.

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[1188] Q. Now, let's go briefly to the study that you made. Your finding, as I saw your testimony on this subject, was

that the—this was after you made the study—that "The evidence did not support and perhaps contradicted it," referring to Dr. Backman's hypothesis. A. Yes, sir.

Q. Now I would like to examine briefly with you some of the things that you did in connection with that study.

As I understand it, you compared average union rates in two cities in the State of New York that you selected, [1189] right? A. Average real union rates, that is deflated by the Consumer Price Index for each city.

Q. The point is, it was two cities you selected in New York State. A. There were only two states for which we had only real union wage rates.

Q. Only two cities, you mean? A. Yes.

Q. And you did this for five out of 343 industries; is that right? A. It was the only one for which the data are available on union wage rates.

Q. These industries, five out of 343? A. Yes, sir.

Q. And you did it, your comparison, with 20 cities which you selected? A. No, sir. We selected the other cities in the comparable class, and in this case the other cities that had Consumer Price Indexes so we could get real wage rates, and union wage rates.

Q. Well, take a city like Newark, for example, does that have a Consumer Price Index? A. Well, no, I don't think so, sir. Consumer Price Index is for New York and north- [1190] ern New Jersey, and I don't know whether Newark, it is probably included within that.

Q. You are not sure? A. I am not sure. Well, I am pretty sure that Newark is included in it.

Q. At all events, out of how many cities that were reported in this BLS survey were the 20 selected, do you

know? A. Well, I selected all cities that had union wage rates and Consumer Price Index.

Q. I am looking for a number, Dr. Kuhn. A. I think it is 20—

Q. 20 out of how many? A. 22 or 23.

Q. Out of how many? A. Well, that is the total, that is all the industries with Consumer Price Indexes that we have.

Q. About 20 out of how many cities that were reported on in this survey? A. I am sorry, I don't understand.

Q. Well, you handed us a BLS book, didn't you? Didn't you? Labor Statistics, 1975 Reference Edition Handbook? A. They are for a number of cities.

[1191] Q. Dr. Kuhn, what I am trying to find out from you is, of the total number of cities that were reported on in this volume, how many of them were omitted because as you say they didn't have cost of living indices reported. A. I would have to count them. I didn't count them.

[1192] Q. There were however, straight time earnings available? A. Yes, sir.

Q. For the 343 industries, were there not? A. Yes, sir.

Q. Those you did not resort to in making your comparison? A. Well, I did check out in looking at Perl's industry classification, I did check out the 3 that were at a significant level and one of which was the non-electrical machinery, if I remember right.

Q. I'm talking about your study. Dr. Kuhn, let's try to keep this simple:

In your study you selected five industries out of 343, didn't you? A. I selected all the evidence that was available.

The Court: Is that five industries?

The Witness: Five industries.

Q. That is what the produce of your study emanates from, your comparison of these five industries? A. Five industries in two cities.

Q. In the two cities, within the two cities which you say have cost of living indices? A. I think it is 22.

[1193] Q. Now, the report tells us that the averages which you compared the Buffalo and New York City with were influenced by the ratio in the printing trades of journeymen to the semi-skilled workers; do you remember that footnote? A. Yes, sir, and they are two occupational classifications.

Q. But the survey, or this booklet, does not weight the average to reflect the effect of the ratio in each city of the semi-skilled to the skilled, does it? A. Not in printing, no, sir. In transit—

Q. No, I am talking about printing.

That is the one that has the footnote. A. No.

Q. Now, let's go a little further with this study. The study did not take into account any fringe items whatever, did it? A. No, sir.

Q. You didn't ascertain the cost over the years of fringe items in New York City or in Buffalo, did you? A. No, except from general knowledge that we know—

Q. Never mind general knowledge. We are talking about the study that you produced here in court. A. That was a consideration which I did think about.

Q. I didn't ask you if you thought about it. I asked you [1194] did you evaluate the fringes or the cost of fringes in settlements in New York City and Buffalo over the

period of years covered by your study? A. There is no such information available to my knowledge.

Q. All right. And there is no such information available as to the cost of fringes included in settlements outside New York City, is there? A. That's right. So one cannot draw any conclusion.

Q. So to that extent you couldn't make a comparison. A. That's right.

Q. And your study does not purport to make one? A. No, it does not.

Q. All right.

Now, in New York City, are you aware that the public employees enjoy especially bountiful or liberal fringe benefits, in New York City? A. Yes, sir. I am a taxpayer.

Q. And don't you envisage that where these public employees work side by side, in similar occupations with people in the private employ, the benefits that are being enjoyed in the way of fringes in the public employ are influencing the demands of the unions and what they are getting in the private sector in the way of fringe benefits [1195] in New York City? A. No, sir. I would be very careful on that, because some of our low wage industries, such as garments, does not appear to have moved in that direction.

Q. Well now, Dr. Kuhn, instead of singling out a single example like this, I couch my question in general terms to ask you whether the level of fringe benefits enjoyed by public workers in New York, in your opinion as an economist, has a bearing upon the demands being made by unions for fringe increases in workers in the private sector in comparable employment and whether in fact it has had a bearing? A. I do not think it has because I have done

a study of local wages in New York City, for government employees, and the gap between public employees and the private sector appears to have grown, and it may well have grown and I would guess probably did for fringe benefits as well.

Q. Well now, you understand very well that I wasn't asking you about wages in the public employ, didn't you, Dr. Kuhn? A. Yes, sir.

Q. And you just told us that your statement about fringes amounts to a guess on your part? A. Yes, sir, because there is no evidence.

[1196] Q. Well now, I'd like, as far as possible, to explore with you and try to finish the exploration on what your study produced, not what you guessed at.

Now, can we take it between us, for an accepted fact, that there has been—withdrawn.

Did your study take into account clauses in contracts in and out of New York City, such as clauses bearing on direct productivity or increased productivity, which have a direct cost bearing but which are not expressed in dollars and cents so as to reach the averages which you were comparing? A. I don't see how they would influence the averages, Mr. Benetar.

Q. Well then I will break the question down.

Did you take into account in your studies clauses won in collective bargaining, either inside New York or outside New York, which represent increase in costs but are not expressed in terms of dollars and cents? A. No, sir, I did not.

Q. Now, do you recognize on the fringe question that the hospital workers of New York enjoy better fringes than elsewhere? A. Than other hospital workers?

Q. Yes, or than other workers generally, that they enjoy [1197] an absolute higher level of fringe benefits? A. No, I do not know that, and I would be skeptical of that.

Q. I don't wish to pursue it any further with you if you don't know it. If you knew it, fine.

What percentage of settlements, what percentage might fringes represent in wage settlements? A. You mean in wage costs for a firm?

Q. All right, in wage costs. A. Well, somewhere between 20 and 30 percent.

Q. All right.

Now, can we take it for granted, between us, that you recognize there was a lag in the economic climate in New York, and particularly during the last ten years? A. Yes, sir.

Q. We have had a loss of population, right? A. Well, in the private sector, sir, not in the public sector.

Q. All right, in the private sector; right, that's what I'm talking about. We have had a loss of manufacturing employment, we have had a loss in personal income.

Now, does your study take into account the lagging economy in New York by weighting any of the figures, [1198] especially for the last ten years? A. No, sir.

Q. Might the lagging economy, Dr. Kuhn, in your view, retard the rate of increases here in the City of New York? A. Yes, I think that would be possible. Then they would show up as some difference from Buffalo.

Q. Well, do you know whether Buffalo, too, as a city in the State of New York, has also lagged behind the national economy? A. I do not know the details of it. I suspect it has.

Q. So do I.

Mr. Benetar: Your Honor, I think this will be my last subject, if your Honor please.

Q. If there were a way of weighting the New York City figures, averages, to take into account the lag, would that in your opinion affect the comparative figures? A. Well, I guess I would want to weight both sides of the comparison. If I took it into account for New York and Buffalo, then I would want to choose those cities that have data available that also have lagged economies and then make those comparisons.

[1199] Q. We just don't have that information from your study, do we? A. No, we don't.

Q. Dr. Backman has said that unemployment insurance has a bearing on the duration of strikes in two ways:

He said they bring earlier settlements, or tend to bring earlier settlements, in some cases, and tend to increase the settlement somewhat and also to increase the strike's duration.

In the article of Ashenfelter and Johnson to which you referred in connection with your direct testimony, they tell us, do they not, that at or about the time of the expiration of a contract, the employer has a choice between giving into the last union demand, which is the wage increase the rank and file find acceptable as of the day of contract expiration—the choice of doing that or taking a strike in order to obtain a lower settlement. Do you recall that? A. Yes, sir.

Q. In effect, they are telling us here, are they not, that at the verge of a strike the employer has the choice of accepting a larger amount, which he must weigh against

whether he can reduce that amount if he stands for a strike, isn't that true? A. Yes.

[1200] Q. And if he in fact accepts the union's wage demand before the strike commences, then he will be settling for a larger sum than if he were able to or did in fact permit a strike to occur and then, in the end, win the strike? A. That is the hypothesis that they put up to test, Mr. Benetar.

Q. I am asking you as an economist whether you would see that the choice the employer has is to accept the union's last wage offer before strike or to put the matter to a test of a strike which if he loses he has not only lost the strike, but he is also going to pay more than he wanted to, whereas if he settles, he will be taking the union's last offer before the strike. A. That is not the hypothesis that Ashenfelter and Johnson sought to test.

It is interesting that the testing showed there was a very high negative correlation between the previous increase in real wages and the settlement or the demand or the strike.

Q. Let's see how their study goes on that subject.

At page 172— A. Could I have a copy, please?

[1201] Q. You mean of your book? A. Oh, oh, of my book.

Q. Page 173, and we will come to theirs later. Look at page 173. I call your attention to the statement in the first complete paragraph, about halfway down:

"The employer's estimate of how long his employees will submit to their loss of wages will partly determine his estimate of the duration of the strike and consequently the cost to him of rejecting the union's terms."

Do you see that? A. Yes, sir.

Q. That is from your book, isn't it? A. Yes, sir.

Q. From this, Dr. Kuhn, may we not draw the conclusion that employers estimate how long their employees are apt to hold out if he lets a strike occur? A. Will partly determine his estimation. It says nothing about what actually does happen.

Q. All right, will he estimate it? A. He will partly estimate it on this basis.

Q. Well, if you were called in by a company on the verge of a strike, as an economist, and they said, "We would like you to review the factors we ought to take into account in deciding whether to settle higher now or try for a lower amount later"; would you advise them to estimate the [1202] duration of the strike, the probable duration? A. Yes, I think that would be a wise move to make.

Q. So do I. In doing so, Dr. Kuhn, would you ask them the question, "Are your employees entitled to unemployment insurance?" A. Yes, I think it would be one of many of the factors that might be considered.

Q. And if they answered "Yes, our employees will be entitled to unemployment insurance," in one case and they answered "No," in the case of another employer in another situation, would you estimate the duration of both strikes identically—I mean, the proposed strikes? A. I think you would have to look to the issues on not on that basis—

The Court: We have to assume everything else is equal.

The Witness: If you assume everything else is equal, then your answer is implied in your assumptions.

The Court: Well, what is the answer?

The Witness: If the only thing that can affect the outcome is the unemployment insurance, that is, you already

assume that the strike is going to be longer than 8 weeks, then of course that becomes a factor to take into consideration; but how do you know it is going to be 8 weeks?

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[1203] The Court: You are being asked to give your opinion to an employer and would you give a different view if he said, "There is compensation available" as opposed to if he said "There is no compensation available" as to the possible duration of the strike.

The Witness: I think this is the problem the advisors would be faced with:

If it were an issue over which one would expect a short strike, then the unemployment insurance is irrelevant. If it is a very intractable issue, then it is going to be a long strike and it would be one of many factors considered.

There may be an intermediary case of 4 to 5 weeks where it might have a marginal influence and then you would have to look at other factors to see if it might come over to the tipping point and it would not be unemployment insurance in and of itself, but it would be one of many factors to help you determine the length and duration of strikes in the intermediate situation.

Q. Let's talk about a strike where the issue is one on which the parties are intractable. Would your estimate of the probable duration be the same to the employer who is [1204] in the state where no benefits are made as it would to the employer where unemployment benefits are paid? A. Yes, I think it would be—

Q. Would be the same? A. I would say that one could not estimate any differences in duration in that situation.

Q. Even under intractable positions and tough issues,

some day a strike has to get settled, doesn't it? A. They almost always have, yes, sir.

Q. Sooner or later? A. Right.

Q. And the answer to the question of whether it is going to be settled is whether it hurts one of the parties so much that he or it can no longer continue the struggle? A. No, sir. Referring to the chapter of my book on bargaining power, there is a whole plea for not considering the issue in that sort of simplistic terms. Is the cost of agreeing together—

Q. We are not talking about costs, we are talking about the intractable kind of issue— A. It is the creativity in coming up with a solution to the problem rather than how long they can bear it out.

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[1212] The Court: But do you say that the fact that they are getting half their pay tax free is of no effect at [1213] all.

The Witness: Well, I don't think I would want to say it has no effect. We certainly do not know or see any evidence of what effect it has.

The Court: Obviously then you concede it has an effect.

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The Witness: One among many.

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Q. I was asking you, I had asked you whether employers estimate the probable duration of strikes. In your experience do employers take into account whether or not their employees are going to get unemployment insurance in making their estimates? A. In the discussions I have had with management people, they have never mentioned this explicitly, but I presume that they might well do so.

[1214] Q. If you were called in by a management firm at the verge of a strike or after it had run for five or six weeks, you would surely inquire into that subject, would you not? A. Well, there would certainly be no reason not to do it.

The Court: I think he would say yes, because he said he would do it before a strike started, so I assume you would do it after a strike started.

Q. Do unions also estimate their staying power before embarking on a strike? A. Well—

Q. Estimate how long they can probably hold out? A. I think they would try to estimate.

Q. And in making those estimates, do the unions take into account whether or not their employees, or rather their members, are going to get unemployment insurance? A. They certainly say they do.

Q. Now, in the book, the article by Ashenfelter and Johnson—have we got a clean copy of this, because you may want to look at this (handed to witness)— A. What page?

Q. Turn to page 40, would you?

Look under that paragraph B, An Operational Formula-
[1215] tion of the Bargaining Model. A. Yes, sir.

Q. All right. You see they say there—by the way, I think I have already pointed out, that was the article that you mentioned in your direct testimony. I did point it out.

"From the analysis of a typical firm's choice between incurring and not incurring a strike, it was concluded that the parties were less likely to agree prior to conflict the greater the acceptable wage increase," and they give that a symbol, "and the speed at which the members' expectations are reduced during a strike."

Do you see that? A. Yes, sir.

Q. And that latter factor, the speed at which the members' expectations are reduced during a strike, is given the symbol Tau, right? A. Yes, sir.

Q. Now, in explaining what the authors mean on the same page by their reference to the speed at which the members' expectations are reduced during a strike, they say, do they not, "Tau, for example, should depend upon the size of benefits generally paid out of strike funds, how much unemployment compensation may be paid strikers, [1216] etc., all of which are institutionally determined."

Do you see that? A. Yes, sir.

Q. And do you also see, on page 40, the statement toward the bottom: "Second, the leadership will be less likely to reduce YO"—that is the initial demand— A. I am sorry, where is that?

Q. Toward the bottom of page 40 on the right-hand side. A. I see it.

Q. "Secondly, the leadership will be less likely to reduce YO when unemployment is low because the unemployment effects of a large wage increase will have little effect on their political stature and sizeable strike funds may replace part of the workers' lost income."

Do you observe that? A. Yes, sir.

Q. Now, do you observe that these authors feel that the speed at which a membership's expectations are reduced are influenced, that is, after a strike starts, are influenced by the size of benefits paid both out of strike funds and out of unemployment insurance? A. No, sir.

Q. Do you see them say that? A. I see them say that [1217] as a hypothesis.

Q. Well, did you see that they say, "It seems plausible to argue"? A. That is right, they are setting up a plausible hypothesis to test, and the last part of the article is to test that hypothesis.

Q. All right. Now, when we get to the conclusion, we find that what they have said is, "Although we are not firmly wedded to the precise estimates presented in this paper"—A. Excuse me, what page?

Q. Page 47. I'm sorry. A. Yes, sir.

Q. Got it? A. Yes, where?

Q. Under "Conclusions." A. Yes.

Q. "Although we are not firmly wedded to the precise estimates presented in this paper, it seems that the aggregate level of strike activity is behaviorally related to the degree of tightness of the labor market and previous rates of change of real wages. Among the implications of our analysis are the following:"—and now going down toward the bottom of page 47:

> [1218] "Other Institutional Changes. For example, the payment of unemployment compensation to strikers could be investigated."

A. Yes, sir.

Q. Now, Dr. Backman, in his testimony, and in the exhibits which we submitted here, have offered to the Court our investigation on the subject of unemployment insurance as it came from the mouths of the union involved here, from the mouth of the company, from the mouths of other unions, from the mouths of independent industry, from the mouths of public commentators. Did you pick up this investigation point in their article and conduct a study specially directed to this unemployment insurance? A.

Well, yes, I did. It was the picking up of Dr. Backman's hypothesis to investigate the effects of unemployment compensation, as Ashenfelter suggested.

Q. No, I am asking whether you, in the year that you have been in this case— A. No, sir, this is why I said Dr. Backman was very inventive.

Q. —made a study other than your attack on Dr. Backman's hypothesis? A. No, sir, I do not see that as an attack. I saw that as a test of his hypothesis.

[1219] Q. Did you see it as a confirmation? A. No, sir, I did not.

Q. I am asking you, did you pick up, in view of what these authors say about the rate of expectations declining, and they are pointing to unemployment insurance, did you pick up this suggestion and conduct an independent study? A. I did not conduct an independent study but I did examine the materials that Ashenfelter presented and tried to play around with different shaped curves, the V curve, and to see what kind of answers and conclusions I could come out with.

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[1219] Redirect Examination by Mrs. Marcus:

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[1220] Q. The union would, if necessary, have asked that the half million members of the union who were working and not on strike pay one dollar a week as an assessment, if that would become necessary? A. Yes, I heard that.

Q. Is that the kind of resource which might be available in strike situations, where there is a national union involved? A. Certainly one important source.

Q. Now, I believe you also heard the testimony of Dr.

Backman, and at page 390 he was asked about prior testimony that he had given, and he was asked about his statement, "Approximately one-third of the households in America are estimated to have two or more persons in the labor force," and I am asking him this question now, "And you said on the average there are about 1.43 persons in the labor force per household, and applying it to steel workers you said if the average indicated above also applies to steel workers it seems clear that the average earnings of these families would exceed the BLD budget by a wide margin," and Dr. Backman said, yes, that was still true today, so we would have a third of the families' labor force have an- [1221] other working member as well as themselves, and even those who don't, even the average household, not just that third, would have 1.43 members, so that would those, would that be another source of income? A. Yes, that becomes an important resource to support the family.

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[1227] A. Well, if a strike goes on for 8 weeks, I would conclude that it is a very intractable issue in dispute.

Q. Why would you so conclude? A. Because the workers will not be able to win enough in any kind of reasonable possible settlement to make it worthwhile in purely monetary terms. . . .

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[1234] Testimony of LEWIS J. PERL; Direct Examination by Mr. Benetar:

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[1245] A. It is my view that the data provides support for the hypothesis that unemployment compensation influences the collective bargaining process, it produces a different pattern in states paying it than in states not paying it.

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[1277] Cross Examination by Mrs. Marcus:

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[1298] Q. Please turn to your Table 407.

Is this not the same analysis as your Table 369 but now for a ten year period instead of a five year period? A. Yes, it is.

Q. And you served this after receiving Defendant's Exhibit 113-1 with the same information, is that correct? A. I don't know when the exhibits were served, but yes, I guess the answer to that is yes.

Q. Please look at the first line on that Exhibit 407. The mean length of all strikes.

Are New York strikes of shorter average duration than those in all other states? A. All strikes? You are referring to all the strikes?

Q. Yes, the first line. A. Yes. 3.5 weeks for New York [1299] versus 3.6 weeks for all other strikes.

Q. Are Rhode Island strikes of longer duration than those of all other states? A. Yes.

Q. Then for all strikes, New York is shorter than all states and Rhode Island is longer, is that correct? A. That's correct.

Q. Please look at the first line under strikes of eight weeks or less on the same chart, 407. These are the mean duration of strikes of eight weeks or less. A. Yes.

Q. Are New York strikes of shorter duration than those of all other states? A. Yes, that's correct.

Q. And are Rhode Island strikes of greater duration than those of all other states? A. Yes.

Q. For strikes of eight weeks or less New York is shorter than all other states and Rhode Island is longer? A. That is correct.

[1300] Q. Is the difference between New York and Rhode Island in mean length of strikes under eight weeks statistically significant?

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[1301] The Court: Dr. Perl, do I recall accurately from your direct testimony that you and counsel for the Phone Company here do not urge upon me to draw any great conclusions from the first two? Is it only from the third set of figures, the 17.4 as opposed to 15.0?

The Witness: There are two numbers on that table which we direct your attention to. One is the percentage of all strikes being settled in the first eight weeks, the second is the mean duration of those strikes which last more than eight weeks. All the other figures that are on the table are there for completeness and I do not think they have any meaning at all.

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[1303] A. . . . Yes, I would think that the difference between New York and Rhode Island—that you have accurately portrayed and it is probably statistically significant.

[1304] Q. Please look at the bottom group on the page, strikes of more than eight weeks. A. Yes.

Q. Are the New York strikes longer than those in other states? A. Yes.

Q. Are Rhode Island strikes of shorter duration than those of all other states? A. Yes.

Q. For strikes of more than eight weeks, New York is longer than the other states and Rhode Island is shorter? A. Yes.

Q. Is the difference between New York and Rhode Island in mean length of strikes over eight weeks statistically significant? A. Let me take my own calculator. If you have already computed the standard error and would tell it to me, I would probably accept it.

The Court: The difference between 17.4 and 14.7 corrected for standard error?

The Witness: Yes.

A. Yes. That is statistically significant at certainly a 1% level.

[1305] Q. Please look at the bottom line on Table 407 of this group which shows the percentage of all strikes which had a duration in excess of eight weeks. A. I beg your pardon?

Q. Look at the bottom line, the bottom group which shows the percentage of all strikes which had a duration in excess of eight weeks. A. Yes.

Q. Do you see that line? A. Yes.

Q. Is it not shown here that the percentage of strikes lasting more than eight weeks is smaller for New York than all other states? A. Yes.

Q. And the corresponding percentage of strikes is larger in Rhode Island than in all other states? A. Yes.

Q. Am I right that this is the complement of the last line in the middle group which shows, does it not, the percentage of strikes of less than eight weeks is greater in New York than other states and smaller in Rhode Island than in other states? A. That is correct.

Q. Therefore, in each of the mean statistics on this chart [1306] 407, New York and Rhode Island behaved differ-

ently from each other, so differently that where New York is smaller than the rest of the country, Rhode Island is larger and where New York is larger than the rest of the country, Rhode Island is smaller; is that correct? A. Well, I think deciding what Rhode Island is like—

Q. I am asking you what the numbers say. Is that what the numbers say or is it not? A. The means for Rhode Island for most of these statistics we are looking at—

Q. Please answer not the question you wish I ask you, but the one I did ask.

I ask you whether the four sets of figures we just referred to in each case where New York is larger and Rhode Island is—

The Court: Whatever it says, it says.

Mrs. Marcus: It is a foundation for the next question.

The Court: You have your foundation in the exhibit. So go ahead with the next question.

Q. However, the purpose of preparing these comparisons was to show that New York was different in strike length from states that did not have a UI representing unemploy-
[1307] ment insurance laws like ours, is that correct? A. That is correct.

The Court: Dr. Perl, what this exhibit does, if I understand it, this exhibit is merely a reduction in a certain form of statistical material, it is not more than that?

The Witness: That is right.

The Court: It has nothing to do with the size of the state, the area of marketing, the numbers of workers or anything. It is just the statistical reduction of material that you have gotten as an input and this is the output?

The Witness: Yes.

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[1369] SAMUEL B. RICHMOND, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mrs. Marcus:

Q. Dr. Richmond, where are you employed? A. I am employed at Columbia University.

Q. In what capacity? A. I am a professor of economics and statistician at the Graduate School of Business.

Q. Can you summarize your educational background? A. I have a bachelors degree from Harvard University in 1940. Master of business administration from Columbia University in 1948 and a Ph.D. from Columbia University in 1951.

Q. Can you summarize your previous employment? A. I have been at Columbia University for thirty years. That covers a great part of my working life.

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[1370] Q. Have you been a member or officer of any professional organization? A. I am a former director of the American Statistical Association and chairman of the American Statistical Association's advisory committee to the Civil Aeronautics Board besides the American Statistical Association, member of the American Economic Association, the Operations Research Society of America and the Institute of Management Sciences and I am on the Board of Trustees of Ramapo College in New Jersey.

Q. Have you been a consultant to any organizations? A. Yes, I have.

Q. Can you name a few of them? A. Yes. The Coca-Cola Company; Intercontinental Marketing Services which

operates throughout the world; the duPont Company; United Fruit Company; Eastern Airlines; Thomas J. Lipton; the Federal Aviation Authority; United States Department of Commerce; Tele-Prompter Corporation; the New York City Housing Authority; the American Society of Composers, Authors and Publishers; the Association [1371] of Industrial Advertisers; the City and County of Denver; the City of Dallas, Texas, the New York Telephone Company; United States Department of Agriculture.

Q. Have you ever been a consultant to a union? A. No, I have not.

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Q. Are any of these relevant to the matters to which [1372] you will be testifying? A. Yes. Particularly the book Statistical Analysis. That deals with statistical techniques and that is what I shall be testifying about.

Q. Is the book Statistical Analysis used in universities? A. Yes. As a matter of fact, it has been used in more than 250 universities in the United States and the world, including Canada, Mexico, South America, Puerto Rico, South Africa.

Q. And the book Operations Research for Management Decisions? A. That is somewhat newer. It hasn't had quite the distribution but it has been used in about 160 universities throughout the world.

Q. Are any of your publications related to labor economics? A. Yes. One entitled Manpower For Aviation.

Q. Have you taught labor economics? A. I have taught labor economics as part of general courses in economics which I have taught. I have taught three general courses in economics which did have that as part of it.

Q. Do you specialize in labor economics? A. I do [1373] not.

Q. What is your specialty? A. Statistical techniques, statistical methodology.

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[1377] Q. Did you hear the testimony of Dr. Lewis Perl? A. Yes, I did.

Q. Are you familiar with his hypothesis as expressed at Pages 1239 and 1240 and 1285 that the payment of unemployment compensation to strikers causes employers to settle strikes earlier to avoid such strikes reaching the eight week period and tends to make strikes of over eight weeks become longer than they otherwise would? A. Yes.

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Q. Do you agree with Dr. Perl's testimony which appears in the transcript at 1245 that Exhibit 407 provides support for the hypothesis that unemployment compensation "produces a different pattern in states paying it than in states not paying it"? A. No, I do not.

[1378] Q. Why do you so conclude? A. Because we have two states which have the law and these two states, as has been brought out earlier, behave differently in every one of the various opportunities that the states have to behave either similarly or differently.

With respect to the mean length of all strikes, to the mean length of the shorter strikes, less than eight weeks, the mean length of strikes longer than eight weeks, and the percentage of strikes that are short.

In each of these cases, whichever one state does, the other does the opposite with respect to the average or the whole of the United States so I find that this is not at all con-

firmatory of the hypothesis but rather I find it quite the opposite.

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Q. Do New York and Rhode Island differ from each other in these four categories to a statistically significant extent? A. Yes. In two of these categories, two important categories, the mean length of strikes of eight weeks and [1379] less, there the mean length for New York and Rhode Island, those two means differed significantly at the one percent level and as was brought out in the testimony for the strikes of more than eight weeks, the mean length of New York and the mean length of Rhode Island differed significantly at the one percent level.

Q. Dr. Perl also testified at Page 1243 that there were only 350 strikes in Rhode Island during the period of this data and only 46 which lasted more than eight weeks.

Dr. Richmond, can you tell us whether 46 is considered by statisticians to be a small sample? A. No, it is not.

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Q. Doctor, can you describe the distinction between a [1380] large and a small sample? A. Yes. Generally in statistics in my book and in just about any other book in statistics, one will find that thirty is the dividing line between a small sample and a large sample.

Q. Are smaller samples, that is now smaller than thirty, used in statistics? A. Indeed they are. As a matter of fact, that is why statisticians differentiate between small samples and large samples because in many procedures with the small samples, different techniques are used, but that does not mean that useful and valid and important

results cannot be and are not obtained from these small samples.

Q. Dr. Richmond, do you agree with Dr. Perl's statement that the Rhode Island data represents so few strikes that the best way to read the data for New York and Rhode Island is to combine them? A. No, I do not.

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[1383] Q. Please turn to Defendants' Exhibit 122-A, that is, the table prepared by Dr. Perl entitled "Analysis of Strikes Lasting More Than Eight Weeks in Rhode Island and New York Compared to the Rest of the Nation".

This table has some of the additional statistical information suggested by the Grinnell decision. A breakdown of strike lengths by industry as well as by state; is that correct? A. Yes.

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[1385] A. . . . .[T]he average for all of the industries is at the bottom, 14.80 weeks.

Now, for the individual industries, some will be longer and some will be shorter than the 14.80.

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This is the important fact to which I would like to point and that is that the strikes that tend to be longer in the other states, those with the pluses, tend to be those which are shorter in New York and Rhode Island than they are in the other states.

Now, this is contrary to the hypothesis. The hypothesis is that long strikes, longer strikes tend to become longer because of the UI and here we find the longer strikes are indeed those that are shorter in New York and Rhode Island [1386] than in the other states.

So I think that's a very important factor and this turns out as extremely statistically significant.

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The Witness: . . . What I am showing here is that there is a very close relationship here and that those industries which have long strikes throughout the nation are the very ones which tended to have shorter strikes in New York and Rhode Island than in the rest of the nation.

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[1387] Q. You found it to be statistically significant? A. It is indeed statistically significant and I find it to be contrary to the hypothesis that we are all talking about. I offer no alternative hypothesis.

Q. This was true even with the New York and Rhode Island results combined, is that correct? A. Yes, it is, but you can see on the work sheets 122-B, C and D, that if you were to remove Rhode Island, it would be essentially virtually the same.

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[1388] Q. For New York? A. Yes. If you looked only at New York, you will find that the results are virtually the same.

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[1391] The Witness: . . . [T]he longer strikes in New York could be due to an infinite number of hypotheses. We have one hypothesis here that is being tested. The hypothesis that it is due to UI fortunately we have two states in which the UI laws occur and we find the data opposite in these two states.

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[1399] A. . . . I reject the combining of New York and Rhode Island because this has the effect of submerging the Rhode Island data and causing us to lose exactly what we are looking for, namely, any evidence of a common pattern.

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[1401] A. In this case there was a hypothesis clearly stated and the causal factor was clearly identified and this then was in a configuration which made it possible to examine data and see whether the data Dr. Perl used would confirm or discredit the hypothesis. The data were developed. We looked at the data and we did not confirm the hypothesis.

This leads me to conclude this must have a very destructive effect on the hypothesis of causality.

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[1403] Q. . . . [Y]ou testified as to what happened in those industries in New York. Did that analysis of the New York data alone also relate to what you just said about the lack of causal connection? A. Yes. I think that was a very meaningful analysis. That is, the one we went through at some length on Exhibit 122A where we showed that those industries which tended to have long strikes throughout the nation, tended to have shorter strikes in New York and Rhode Island than in the other states.

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. . . [I]f you were to look at just New York and not Rhode Island, the results would be identical.

Q. And you found the same from the work sheet referring to New York alone? A. Yes, I did that.

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[1443] By the Court:

Q. Why is the hypothesis damaged because there are some strikes that are longer than the average where New [1444] York happens to be shorter than they are? That is what it boils down to. Having some strikes that nationally are longer than the average but New York happens to be shorter and why does that prove anything and if it does, what does it prove? A. Well, it didn't happen in just one case. It happened in many more cases than could happen by chance and I don't know what it proves but I know what it discredits.

It discredits an assertion that those strikes that tend to be long elsewhere are longer in New York.

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SUPREME COURT OF THE UNITED STATES

No. 77-961

NEW YORK TELEPHONE COMPANY, *et al.*,

Petitioners,

v.

NEW YORK STATE DEPARTMENT OF LABOR, *et al.*

Order Allowing Certiorari. Filed March 27, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.